

**Summer Food Service Program (SFSP)
Food Bank of the Rockies**

**Vendor/Food Service Management Company
Request for Proposal (RFP) and Contract**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form.

To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights; 1400 Independence Avenue, SW Washington, D.C. 20250-9410;(2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. This institution is an equal opportunity provider.

**Colorado Department of Education
Office of School Nutrition
1580 Logan St, Suite 760
Denver, CO 80203
Phone (303) 866-6661
Toll-free (888) 245-6092
Website <http://www.cde.state.co.us/nutrition>**

REQUEST FOR PROPOSAL AND CONTRACT INDEX

Contents

I. INTRODUCTION..... 3

II. REQUEST FOR PROPOSAL / INSTRUCTIONS 3

A. Legal Notice..... 3

B. Request for Proposal 3

C. Procurement Method..... 4

D. Pre-Proposal Meeting / Timeline (N/A) 4

E. Proposal Submission and Award 4

F. Late Proposals..... 6

G. Altering, Amending or Withdrawing Proposal 6

H. Calculation of Time..... 7

I. Firm Offer 7

J. Final Contract 7

III. STANDARD TERMS AND CONDITIONS 8

A. Definitions 8

B. Scope and Purpose..... 9

C. Food Service12

D. Purchases14

E. FSMC Employees15

F. Use of Facilities, Inventory, Equipment, and Storage.....15

G. Health Certifications/Food Safety/Sanitation15

H. Financial Terms16

I. Record Keeping16

J. Term and Termination17

K. Insurance17

L. Certifications18

M. Miscellaneous18

IV. AGREEMENT21

SECTION A: GENERAL PROVISIONS.....22

EXHIBIT A: SITE INFORMATION LIST INSTRUCTIONS FOR COMPLETION23

EXHIBIT B: MENU CYCLES : BIDDER SHALL ATTACH A CYCLE MENU FOR EACH SITE FOR EACH MEAL TYPE.....23

EXHIBIT C: SUMMER FOOD SERVICE PROGRAM MEAL PATTERN REQUIREMENTS23

EXHIBIT C-1 CACFP MEAL PATTERN24

EXHIBIT D: UNIT PRICE SCHEDULE28

EXHIBIT D-1: SUMMARY BID SHEET29

EXHIBIT E: DEBARMENT AND SUSPENSION FORM30

EXHIBIT F: CERTIFICATION REGARDING LOBBYING30

EXHIBIT G: ANTI-COLLUSION AFFIDAVIT31

EXHIBIT H: ADDENDUM TO THE SUMMER FOOD SERVICE PROGRAM FOOD SERVICE MANAGEMENT CONTRACT32

I. INTRODUCTION

This document contains a Request for Proposal to food service management companies to bid for the furnishing of unitized meals to be served to children participating in the Summer Food Service Program (SFSP) authorized by Section 13 of the National School Lunch Act, and operated under Part 225 of the U.S. Department of Agriculture (USDA) regulations. This document sets forth the terms and conditions applicable to the proposed procurement. Upon acceptance it shall constitute the contract between the offeror and the sponsor below.

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

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

II. REQUEST FOR PROPOSAL / INSTRUCTIONS

A. Legal Notice

Notice is hereby given that Food Bank of the Rockies, hereinafter referred to as the sponsor, intends to examine alternatives to its present food service program, including self-preparation.

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

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

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

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

B. Request for Proposal

1. Sponsor will consider a Fixed Price Proposal for Vended Meals.
2. In accepting proposals Food Bank of the Rockies reserves the right to reject any and all proposals and to waive any minor informality in order to take the action which it deems to be in the best interest of sponsor.
3. Offerors must submit a complete response to this Request for Proposal (RFP), including all certifications, for consideration as a responsive proposal.
4. Contracts entered into on a basis of submitted proposals are revocable if contrary to law.
5. See Standard Terms and Conditions herein below.

C. Procurement Method

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

D. Pre-Proposal Meeting / Timeline (N/A)

E. Proposal Submission and Award

1. Sponsor must use this CDE prototype FSMC Request for Proposal and Contract. Sponsors not completing the required procurement procedures cannot be approved for participation in the USDA reimbursement programs.
2. Two copies of Competitive Sealed Proposals are to be submitted to:

Name of sponsor Contact: Chris Taylor
Mailing Address: 10700 E. 45th Avenue
Physical Address: (same)
City: Denver
State/Zip: CO 80239

3. Sealed Proposals must be submitted by:
 - a. Time: 4pm (*proposals will not be accepted after this time*)
 - b. Date: April 20, 2017
 - c. Location: Food Bank of the Rockies, 10700 E. 45th Avenue, Denver 80239
 - d. Sealed Proposal submitted marked "**Food Service Management Proposal, Nutrition Network**".
4. Bonding Requirements

A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
5. To be considered, each offeror must submit a complete response to this solicitation **using the forms provided**.
 - a. No other documents submitted with the RFP and Contract will affect the Contract provisions, and **there may be no modifications to the RFP and Contract language**.
 - b. In the event that Offeror modifies, revises, or changes the RFP and/or Contract in any manner, sponsor may reject the offer as non-responsive.
 - c. Section P offers sponsor the opportunity to include any additional / needed services.
6. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (2 CFR 200.320)
 - a. A responsible offeror is one who's financial, technical, and other resources indicate an ability to perform the services required.
 - b. Offeror shall submit for consideration such records of work and further evidence as may be required by the sponsor's Board of Trustees.
 - c. Failure to furnish such records and evidence, or the inclusion of any false or misleading information therein shall be sufficient cause for the rejection of the proposal or termination of any subsequent contract.
 - d. The qualification data shall be submitted by each offeror along with the sealed proposal, and shall include the following:
 - i. Offeror must be incorporated or licensed to do business in the State of Colorado and must be registered with the Colorado Department of Education (CDE) Office of School Nutrition (OSN).
 - ii. Annual reports or financial statements for the past fiscal year, certified by a licensed public accountant, must be included in the pre-qualification data.
 - iii. Information that offeror is doing business with like school systems and is familiar with the regulations pertaining to operations in such environments, if applicable.
7. Offerors or their authorized representatives must fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the offeror's own risk who cannot secure relief on plea of error.
8. Any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by the sponsor in conducting a procurement under the USDA entitlement programs specified in 2 CFR

200.319 shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.

9. The sponsor is not liable for any cost incurred by the offeror in submitting a proposal. **Paying the FSMC from Child Nutrition Program (CNP) funds is prohibited until after the Contract is approved by CDE, if over \$150,000, and signed by the sponsor.**
10. If additional information is requested, please contact: **Chris Taylor, Manager Nutrition Network Division; christaylor@foodbankrockies.org**. Any additional information provided to one offeror will be available to all. **Please submit requests via e-mail only.** In order to facilitate prompt sharing of information, **no phone calls will be accepted.**

11. Award Criteria:

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

12. Weight Criteria

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

Points	Criteria
40	Cost
30	Meal Content <ul style="list-style-type: none"> · Fresh produce daily · 8oz Fresh Milk with each meal · 1.5-2.0 whole grains per meal · Non-expired product
20	Delivery by vendor directly to sites
10	Administrative Requirements <ul style="list-style-type: none"> · Provide weekly reports to sponsor · Provide Production Records weekly
	Experience, References with like sponsors and familiarity with regulations pertaining to such operations
100	TOTAL

F. Late Proposals

Any proposal submitted after the time specified for receipt will not be considered and will be returned unopened.

G. Altering, Amending or Withdrawing Proposal

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

H. Calculation of Time

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

I. Firm Offer

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

J. Final Contract

The complete contract includes:

Note: the complete contract must be submitted to CDE for approval if over \$150,000.

1. All documents included by the sponsor in the CDE approved RFP template with the FSMC responses.
2. Any additional negotiations that have been completed and terms that are included in additional documents, including guaranty, future financing of equipment or IT systems that are not included in the CDE RFP/contract template.
3. All documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e. worksheets, attachments submitted by the FSMC in the proposal, and operating cost sheets)
4. All of the above terms need to be added to the original CDE approved RFP/ contract and signed by all parties.

III. STANDARD TERMS AND CONDITIONS

A. Definitions

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

1. "Accounting Periods" means Accounting Period Used (i.e., first day of the month through the last day of the month)
2. "Allowable Cost" means costs that are allowable under 2 CFR Part 225, "Cost Principles for States, Local Governments, and Indian Tribes", 2 CFR Part 220, "Cost Principles for Educational Institutions", and 2 CFR Part 230, "Cost Principles for Non-Profit Organizations", as applicable, and their Attachments, and 2 CFR Subpart E, as applicable.
3. "Applicable Credit" " means the meaning established in 2 CFR Part 225, Appendix A, Section C(4), and 2 CFR Part 230, Appendix A, Section A(5), respectively.
4. "Buy American"—The term 'domestic commodity or product' means an agricultural commodity that is produced in the United States; and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
5. "Charge" means any charge for an Allowable Cost that is:
 - i. Incurred by FSMC in providing the goods and services that are identified in sponsor's Food Service Budget;
 - ii. Not provided for in the General and Administrative Expense Fee; and
6. "Child Nutrition Program (CNP) " means the USDA Child Nutrition Programs in which sponsor participates
7. "Contract" means this RFP and Contract, the exhibits attached to this RFP and Contract and FSMC's Proposal.
8. "Cost-reimbursable" contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.
9. "CDE" means the Colorado Department of Education.
10. "Direct Cost" means any Allowable Cost that is:
 - i. incurred by FSMC in providing the goods and services that are identified in sponsor's Food Service Budget; and
 - ii. Reasonably necessary in order for FSMC to perform the Services hereunder. The term "Direct Cost" does not include any cost allocated to sponsor as Charges, the General and Administrative Expense Fee, or any Management Fees.
11. "Effective Date" means the first day of contract that vendor services begin for payment purposes.
12. "Fixed Fee" means an agreed upon amount that is fixed at the inception of the Contract. FSMC must bid and will be paid at a Fixed Fee per meal/Meal Equivalent. The offer amount should be based on assumption that no donated USDA Foods will be available for use and includes all expected rebates, discounts and other applicable credits.
13. "FSMC's Proposal" means Food Service Management Company's response to the RFP and Contract.
14. "Healthy Hunger Free kids Act of 2010: (HHFKA)The current Child Nutrition Program Reauthorization is due for reauthorization in 2015.
15. "Procurement standards". Sponsor may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Summer Food Service reimbursement funds adhere to the standards set forth in 2 CFR 200, as applicable, and in the applicable Office of Management and Budget Circulars. Sponsor procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as

applicable. No employee, officer or agent of the sponsor shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards

16. "Program(s)" or "Child Nutrition Program (CNP) (s)" means the USDA Child Nutrition Programs in which sponsor participates.
17. "Program Funds" means all Summer Food Service reimbursement funds.
18. "Proposal" means Food Service Management Company's response to the RFP and Contract.
19. "RFP" means sponsor's Request for Proposal and Contract, and all of its attachments.
20. "Services" means the services and responsibilities of FSMC as described in this Contract, including any additional services described in Section B of this Contract.
21. "Sponsor" as defined in 7CFR § 225.2.
22. "Sponsor's Food Service Facilities" means areas, improvements, personal property, and facilities made available by sponsor to FSMC for the provision of the food services as described herein.
23. "Sponsor's Food Service Program" means the preparation and service of food to sponsor's students, staff, employees and authorized visitors, including the following programs: *National School Lunch Program (NSLP), School Breakfast Program (SBP), After School Care Snack Program (ACSP), Summer Food Service Program (SFSP), Fresh Fruit and Vegetable Program (FFVP), and a la carte food service.*
24. "Sponsor's Food Service Location(s)" means the schools or other locations where Program meals are served to sponsor's schoolchildren.
25. "Summer Food Service Program (SFSP)" means either the Summer Food Service Program or the Seamless Summer Option identified herein, and in which sponsor participates.
26. "USDA" means United States Department of Agriculture, Food and Nutrition Service.
27. Vended Meals: In a fixed fee vended meals contract, the contractor provides the meals only (prepackaged, pre-plated) and does not manage any other aspect of the food service. However, if the contractor's employees are responsible for final preparation and/or serving of prepackaged, pre-plated meals, the additional services are included in the fixed fee bid and may not be charged separately.

B. Scope and Purpose

- 1) Duration of Contract. Unless it is terminated in accordance with Section L, this Contract will be in effect for a period of one year and may be renewed for up to four additional terms of one year each upon mutual agreement between sponsor and FSMC, consistent with Article X, Section 20 of the Colorado Constitution.
- 2) 7 Code of Federal Regulations (CFR) Part 225, entitled Summer Food Service Program is hereby incorporated by reference. Both the sponsor and the FSMC must operate in accordance with all Program regulations.
- 3)
- 4) During the term of this Contract, FSMC shall operate in conformance with sponsor's agreement with the CDE Office of School Nutrition (OSN).
- 5) Contractor agrees to deliver unitize meals inclusive of milk or juice to locations set out in Exhibit A, attached hereto and made a part hereof, subject to the terms and conditions of this solicitation.

- 6) All meals furnished must meet or exceed USDA requirements set out in Exhibit C, attached hereto and made a part hereof. Food Service Management Companies may prepare unitized meals, with or without milk, for use in Summer Food Service Program.
- 7) Sponsors may not contract out the following management responsibilities of the Program (7 CFR 225.15(a)(3)). The sponsor is responsible for full compliance with rules and regulations relating to implementation of the SFSP. (7CFR 225.15(3))
- 8) The following administrative responsibilities must remain with an employee of the sponsor, as the SFSP Sponsor, and may not be delegated to a FSMC employee.

The sponsor is responsible to:

- A. Meal orders: Inform the FSMC of approved level at each site for which the FSMC will provide meals
 - a. Plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service
 - B. Records and claims
 - a. Maintain accurate records which justify all costs and meals claimed.
 - b. Submit claims for reimbursement in accordance with 225.15
 - C. Training and monitoring
 - c. Hold Program training sessions for its administrative and site personnel and not allow a site to operate until personnel attend at least one of the trainings
 - d. Visit each of their sites in accordance with (7 CFR 225.14(c)(6) and 225.15(d)(2) and (3))
 - e. Maintain a reasonable level of site monitoring
 - f. Document required SFSP site visits of all sites
 - D. Determination / Processing of Free and Reduced Price applications, if applicable
 - a. Coordination of printing of materials
 - b. Approving Official, Hearing Official, or contact person for questions.
 - c. Development of materials for distribution from prototypes provided by CDE, including Application, Public Release, etc.
 - d. Distribution of materials to parents/guardians
 - e. Collection of submitted applications
 - f. Processing of applications, including approval/denial and follow-up to obtain complete information.
 - g. Inputting data into computer if computer system automatically determines eligibility.
 - h. Final approval and signature of approving official.
 - i. Notification of approval and status
 - E. Submission of Media Release
 - F. Completion of Summer Food Service Program Sponsor and Site Application(s)
 - G. Preparation and submission of claim for reimbursement
 - a. Compiling daily site counts at the site and sponsor level, and maintaining records.
 - b. Certifying the claim for reimbursement
- 9) FSMC may complete the following duties in the SFSP for the sponsor
 - A. Meal preparation; preparation of food according to the menu planning option
 - B. Meal delivery
 - C. Meal service; meals served within the designated time period
 - D. Procurement of food
 - 10) Sponsor shall be responsible for determining eligibility of all SFSP sites.
 - 11) FSMC must comply with the menu cycle approved by sponsor for the SFSP

- a. Sponsor shall approve any changes in the menus no later than 3 prior to service after the initial cycle has been used.
- 12) Pricing shall be on the cycle menus described in Exhibit B. Bid price must include the price of food components (including milk and/or juice, if part of unitized meal), packaging, transportation and all other related costs (e.g. condiments, utensils, etc.). The unit prices of each meal type which the bidder agrees to furnish must be written in ink or typed in the blank space provided and must include proper packaging as required in the specifications and delivery cost to the designated sites. Unit prices shall include taxes, but any charges or taxes which are required to be paid under future laws must be paid by the bidder at no additional charge to the sponsor.
- 13) Sponsor will make final determination of the opening and closing dates of all SFSP sites.
- 14) The FSMC shall
- a) Be an independent contractor and not an employee of the sponsor. The employees of the FSMC are not employees of the sponsor.
 - b) Submit itemized invoices to the sponsor monthly in compliance with (7 CFR § 225.6(h)(2)(iv)). Each invoice shall give a detailed breakdown of the number of meals delivered at each site during the preceding period. The sponsor shall calculate the average number of meals delivered each day for the applicable period. Payment will be made at the unit price shown for that range. Each payment period will be calculated and paid for independent of other periods. No payment shall be made unless the required delivery tickets/receipts have been signed by the site representative of the sponsor. **The contractor shall be paid by the sponsor for all meals delivered in accordance with this contract and SFSP regulations. However, neither the USDA nor CDE assumes any liability for payment of differences between the number of meals delivered by the contractor and the number of meals served by the sponsor that are eligible for reimbursement.**
 - c) Maintain all records necessary, in accordance with applicable regulations, for sponsor, CDE and USDA to complete required monitoring activities and must make said records available to sponsor, CDE, and USDA upon request for the purpose of auditing, examination and review. (7 CFR § 210.16(c)(1))
 - d) Comply with applicable federal, state and local laws, rules and regulations, policies, and instructions of CDE and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 215, 220, 225, 226, 245, 250, if applicable; OMB Circulars, 2 CFR 200.
 - e) Comply with all sponsor building rules and regulations.
- 15) Sponsor shall be responsible for:
- a) Signature authority for the application/contract, policy statement, and Programs indicated in Exhibit A: Site Information, herein, and the monthly claim for reimbursement. (7 CFR §225.15 (a)(3))
 - b) Determination of eligibility for free or reduced-price meals, if applicable.
 - c) Conducting any hearings related to determinations
 - d) Establishment and maintenance of the free and reduced-price meals' eligibility roster, if applicable.
 - e) Conduct of sponsor's Food Service Program.
 - f) Supervision of the food service operations in such manner as will ensure compliance with all applicable statutes, regulations, rules and policies including regulations, rules, and policies of CDE and USDA regarding the Child Nutrition Programs.

- g) Control of the Non-profit School Food Service Account and overall financial responsibility for sponsor's Food Service Program.
 - h) Ensuring the resolution of Program reviews and audit findings. FSMC shall fully cooperate with sponsor in resolving review and audit issues. FSMC shall indemnify SPONSOR for any fiscal action, claims, losses or damages, fault, fraud, required repayment or restoration of funds, including reasonable attorney's fees incurred in defending or resolving such issues, that results from FSMC's intentional or negligent acts.
 - i) Monitoring the food service operation of FSMC through on-site visits to ensure that the food service is in conformance with USDA program regulations.
 - j) The counting and claiming system.
 - k) Ensuring that CDE has reviewed and approved the contract terms and that the sponsor has incorporated all CDE required changes into the contract or amendment before any contract or amendment to an existing FSMC contract is executed.
 - l) Maintaining a contract administration system which ensures that the FSMC performs in accordance with the terms, conditions, and specifications of their contract.
- 16) Sponsor and FSMC agree that this Contract does not permit all income and expenses to accrue to the FSMC and is neither a *cost-plus-a-percentage-of-income* nor a *cost-plus-a-percentage-of-cost* contract as required under United States Department of Agriculture (USDA) Regulations 7 CFR §210.16(c) and 2 CFR 200.
- 17) Payments on any claim shall not preclude sponsor from making a claim for adjustment on any item found not to have been in accordance with the provisions of this Contract and bid specifications.
- 18) Any change to the scope of services to be provided by FSMC that is beyond the scope or original intent of this RFP/Contract or involves a total increase of \$100,000 or more must be rebid.
- 19) Any changes to the terms or conditions of this Contract, which are required by Federal or State law or rule, or changes to Federal or State laws or rules, are automatically incorporated herein, effective as of the date specified in such law or rule.
- 20) Any changes made by the sponsor or FSMC to a CDE pre-approved prototype contract or CDE approved contract term must be approved in writing by CDE before the contract is executed. When requested, the sponsor must submit all procurement documents, including responses submitted by potential contractors, to CDE, by the due date established by CDE
- 21) Gifts from FSMC: The sponsor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors in accordance with all laws, regulations and policies. ((CO. Const. Art. XXIX, Section 3; 2 CFR200.318) To the extent permissible under federal, state, or local laws, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

C. Food Service

- 1) FSMC shall:
- a) Serve meals on such days and at such times as requested by the sponsor.
 - b) Offer reimbursable meals to all eligible children participating in sponsor's Food Service Programs indicated herein.
 - c) Promote maximum participation in the Programs.
 - d) Provide specified types of service in the schools/sites listed in Exhibit A.
 - e) Support the SPONSOR's compliance with the federal Child Nutrition Reauthorization (CNR) which authorizes all of the federal child nutrition programs, including the School Breakfast,

National School Lunch, Child and Adult Care Food, Summer Food Service, and the Fresh Fruit and Vegetable Programs and WIC. The current law, the Healthy, Hunger-Free Kids Act of 2010 is due for reauthorization in 2015.

- 2) Sponsor shall retain control of the quality, extent, and general nature of the food service. The sponsor reserves the right to inspect and determine the quality of food delivered and reject any meals which do not comply with the requirements and specifications of the contract. **The contractor will not be paid for unauthorized menu changes, incomplete meals, meals not delivered within the specified delivery time period, and meals rejected because they do not comply with the specifications.** The sponsor reserves the right to obtain meals from other sources, if meals are rejected due to any of the stated reasons. The contractor will be responsible for any excess cost, but will receive no adjustment in the event the meals are procured at lesser cost. The sponsor or inspecting agency shall notify the contractor in writing as to the number of meals rejected and the reasons for rejection. The SFSP regulations provide that statistical monitoring procedures may be used to disallow payment for meals which are not served in compliance with SFSP regulations. In the event that disallowances are made on the basis of statistical monitoring, the sponsor and the contractor will be notified in writing by the CDE as to the number of meals disallowed, the reasons for disallowance, and the methodology of the statistical monitoring procedures employed.
- 3) Meal Orders: Sponsor will order meals on agreed upon day of the week preceding the week of delivery; orders will be placed for the total number of operating days in the succeeding week, and will include breakdown totals for each site and each type of meal. The sponsor reserves the right to increase or decrease the number of meals ordered on an agreed upon number of hours hour notice, or less if mutually agreed upon between the parties to this contract.
- 4) Specifications
 - a) Packaging:
 - i. Hot Meal Unit – Package suitable for maintaining meals in accordance with local health standards. Container and overlay should have an air-tight closure, be of non-toxic material, and be capable of withstanding temperatures of 400 degrees (204° C) or higher.
 - ii. Cold Meal Unit (or Unnecessary to Heat) – Container and overlay to be plastic or paper and non-toxic.
 - iii. Cartons – Each carton to be labeled. Label to include:
 - (a) Processor’s name and address (plant).
 - (b) Item Identity, meal type.
 - (c) Date of production.
 - (d) Quantity of individual units per carton.
 - iv. Meals shall be delivered with appropriate nonfood item: condiments, straws for milk, napkins, single service ware, etc. Sponsor shall insert the types of nonfood items that are necessary for the meals to be eaten:
- 5) Food Preparation:

Meals shall be prepared under properly controlled temperatures and assembled not more than 24 hours prior to delivery, with the exception of shelf stable meals. Meals shall be prepared in accordance with State and local health standards.
- 6) Special Dietary Needs
 - a) FSMC is required to make substitutions in the food components of the meal pattern for
 - i. Children with dietary disabilities based on a medical statement completed and signed by a licensed physician, advanced practice nurse with prescriptive authority or physician assistant.

- ii. A medical statement, completed and signed, must be on file prior to making meal accommodations. Forms are available at:
<http://www.cde.state.co.us/nutrition/nutriSpecDietaryNeeds.htm>
- b) FSMC may make substitutions in the food components of the meal pattern for students with a medical or special dietary need that does not rise to the level of a disability. A medical statement must be signed by a recognized medical authority.
- c) Optional clause for sponsor's that offer fluid milk substitutes for nondisabled students who can't consume fluid milk due to medical or special dietary needs:
 - i. FSMC shall make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs.
 - ii. Substitutions shall be made when a medical authority or student's parent or legal guardian submits a medical statement for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet.
 - iii. Approval for fluid milk substitutions shall remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or sponsor changes its substitution policy for non-disabled students.
 - iv. Fluid milk substitutes shall provide nutrients as required by federal and state regulations. (Reference 7 CFR § 210.10(g) and 7 CFR § 220.8)
 - v. There will be no additional charge to the student for such substitutions.

D. Purchases

1. FSMC will do all purchasing for Summer Food Service Program
2. FSMC may not require any additional liability coverage, regardless of dollar value, beyond that which sponsor would require under procurements not involving FSMC.
3. Buy American: sponsor and FSMC acknowledge that the USDA requires that a school nutrition program will purchase, to the maximum extent practicable, domestic commodities or products.(7CFR210.21). Non-domestic products requested for use must be approved in writing by sponsor.
4. The Colorado Farm to School Healthy Kids Act (C.R.S. 22-82.6-101,102)
 - a) declares it is in the best interests of Colorado's children, farmers, ranchers, food processors, manufacturers, and communities to develop a more robust and self-sustaining agricultural sector that promotes healthy foods at schools and to encourage school meal programs to increase their use of local farm and ranch products in their food service programs, in order to improve child nutrition and strengthen local and regional agricultural economies.
 - b) Sponsor requests that the FSMC submit a list of locally grown, processed, and manufactured items available through them for consideration on a regular basis. The products must be labeled and a good faith effort put forward by FSMC to purchase local first when available according to federal, state and local regulations regarding procurement and geographic preference.
5. Sponsors may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing geographic preference to procure such products, the sponsor making the purchase has the discretion to determine the local area to which the geographic preference option will be applied; For the purpose of applying the optional geographic procurement preference, "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum

packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk. (7CFR210.21)

E. FSMC Employees

8. FSMC shall:

- a) Comply with all wage and hours of employment requirements of federal and state laws.
- b) Be responsible for supervising and training FSMC personnel. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff.
- c) Be responsible for the hiring and termination of non-management staff who are employees of FSMC.
- d) Provide Workers' Compensation coverage for its employees, as required by law.
- e) Instruct its employees to abide by the policies, rules, and regulations with respect to use of sponsor's premises as established by sponsor and are furnished in writing to FSMC.
- f) Maintain its own personnel and fringe benefits policies for its employees, subject to review by sponsor.
- g) Assign to duty on sponsor's premises only employees acceptable to sponsor.
- h) Remove any employee who violates health requirements or conducts him/herself in a manner that is detrimental to the well-being of the students, provided such request is not in violation of any federal, state or local employment laws. In the event of the removal or suspension of any such employee, FSMC shall immediately restructure the food service staff to avoid disruption of service
- i) Not blacklist or require a letter of relinquishment or publish or cause to be published or blacklisted any employee of FSMC or sponsor discharged from or voluntarily leaving the service of FSMC or sponsor with intent of and for the purpose of preventing such employee from engaging in or securing similar or other employment from any other corporation, company, or individual.

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

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

1. Sponsor will make available, without any cost or charge to FSMC, area(s) of the premises in which FSMC shall render its services.

G. Health Certifications/Food Safety/Sanitation

1. FSMC shall

- a) Maintain, in the storage preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety inspection requirement of § 210.13(b). (7 CFR § 210.9(b)(14))
- b) Maintain all State of Colorado and local health certification for any facility outside the school in which it proposes to prepare meals and shall maintain this health certification for the duration of this Contract. (7 CFR § 210.16(c)(2))
- c) Obtain and post all licenses and permits as required by federal, state, and/or local law.
- d) Comply with all State of Colorado and local and sanitation requirements applicable to the preparation of food. (7 CFR 210.16(a)(7))
- e) Adhere to the food safety program implemented by the SPONSOR for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required by the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265).

2. Sponsor shall
 - a) Maintain applicable health certification
 - b) Ensure that FSMC complies with all applicable state and local regulations pertaining to sanitation, preparing or serving meals at a sponsor facility. (7 CFR § 210.16(a)(7))
3. The FSMC or sponsor may ensure that in storing, preparing, and serving food, proper sanitation and health standards are met. Sponsor shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented within two weeks of the citation.

H. Financial Terms

1. **General Rate Information for all RFP/Contracts:**
 - a) All fee/rate increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by sponsor.
 - b) CPI Fee increases for the upcoming Contract renewal year must be submitted to sponsor by April 1 of each year.
 - c) No other fee increases will be allowed within the food service contract.
 - d) For the purpose of computing the foregoing meal counts, the number Summer Program meals served to children shall be determined by actual count.
 - e) No payment will be made to FSMC for meals that:
 - i) are spoiled or unwholesome at the time of delivery;
 - ii) do not meet detailed specifications as developed by sponsor for each food component in the meal pattern; or
 - iii) Do not otherwise meet the requirements of this Contract.
2. **Payment Terms/Method:** FSMC shall invoice sponsor within 7 days after the end of each Accounting Period for the total amount of sponsor's financial obligation for that Accounting Period.
3. No interest or finance charges that may accrue under this Contract may be paid from sponsor's Food Service Account.
4. **FSMC must:**
 - a) Be responsible for paying all applicable taxes and fees, including, but not limited to, excise tax, state and local income tax, payroll and withholding taxes, for FSMC employees.
 - b) Indemnify and hold sponsor harmless for all claims arising from payment of such taxes and fees.

I. Record Keeping

FSMC shall:

- a) Maintain records (supported by invoices, receipts, or other evidence) sponsor will need to meet monthly reporting responsibilities and
 - i) Shall submit monthly operating statements in a format approved by the sponsor no later than the last day of the month following the month in which services were rendered.
- b) Provide sponsor with a year-end statement.
- c) Provide all documents necessary for the independent auditor to conduct sponsor's single audit.
- d) Make its documents, papers, and records pertaining to the Contract available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain for the purpose of making audit, examination, excerpts, and transcriptions.
- e) Retain records beyond the three-year period if audit findings regarding FSMC's records have not been resolved within the three-year record retention period, for as long as required for the resolution of the issues raised by the audit. (Reference 7 CFR §210.9(b)(17), 2 CFR §200.333)

- f) Authorized representatives of sponsor, CDE, CDHS, USDA and USDA's Office of the Inspector General (OIG) shall have the right to conduct on-site administrative reviews of the food service operation.

J. Term and Termination

1. Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (2 CFR Appendix II to Part 200)
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the sponsor including the manner by which it will be effected and the basis for settlement.
3. In the event either party commits material breach of this Contract, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have 30 days within which to cure the default.
 - A. If the default is not cured within that time, the non-breaching party shall have the right to terminate this Contract for cause by giving 30 days written notice to the breaching party.
 - B. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this Contract.
 - C. Notwithstanding the foregoing termination clause, in the event that the breach concerns sanitation problems, the failure to maintain insurance coverage as required by this Contract, failure to provide required periodic information or statements or failure to maintain quality of service at a level satisfactory to sponsor, sponsor may terminate this Contract immediately.
4. Either party may terminate this Contract for cause by providing sixty (60) days prior written notice to the other party. (7 CFR210.16(c)(3)(d))
5. In the event that either party is prevented from performing its obligations under this Contract by war, acts of public enemies, fire, flood or acts of God (individually each known as a "Force Majeure Event"), that party shall be excused from performance for the period of such Force Majeure Event exists.
6. In the event of FSMC's nonperformance under this Contract or the violation or breach of the terms of this Contract, sponsor shall have the right to pursue any and all available administrative, contractual and legal remedies against FSMC. Nonperformance subjects the FSMC to specified sanctions in instances where the FSMC violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in §210.21.
7. FSMC shall promptly pay sponsor the full amount of any meal over claims, disallowed costs or other or fiscal actions which are attributable to FSMC's actions hereunder, including those over claims based on review or audit findings that occurred during the Effective Dates of original and renewal contracts.
8. Sponsor is the responsible authority without recourse to USDA or CDE for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

K. Insurance

1. FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Colorado. A Certificate of Insurance of FSMC's insurance coverage indicating these amounts must be submitted at the time of award.
2. The contractor shall carry product casualty and insurance (theft, storm, and fire damage, general food safety and sanitation) on all food and supplies in the contractor's custody or control regardless of location, in accordance with acceptable industry practices. The insurance carrier shall have a rating of A- or better as rated by the A.M. Best Company. The sponsor shall be an additional named insured

agency on the Certificate of Insurance and all payments of losses shall be made payable jointly to the contractor and the sponsor. The extent of coverage shall exceed the amount of the contract by 10% and not more than 25% of the total contract.

3. Bids shall be accompanied by a statement from an insurance carrier, licensed to conduct business in the State of Colorado, indicating the carrier's agent has reviewed the bid and insurance requirements, can satisfy all required coverage specifying the type of policy/coverage providing said coverage. The successful bidder shall provide proof of insurance to the sponsor not later than ten days following award of the contract. Coverage shall not lapse during the period of the contract. Contract extension will require proof of insurance for the period of time service is extended according to the contract or amendments made to the contract. Each item below must be covered in writing on the Certificate of Insurance.
 - A. The policies must state "all risks," or "special causes of loss," or "broadest coverage available in the market place" and the dollar value limit.
 - B. There must be a 30-day cancellation or non-renewal notice rather than ten. This notice must be directed to the sponsor.
 - C. The certificate of insurance must remove the words "endeavor to" from the cancellation section to reflect a firm commitment toward issuing a written cancellation or non-renewal notice to the certificate holder.
 - D. The food and supplies used for meeting the terms of the food service contract must be covered using one of the following acceptable terms: marine, cargo, inventory, contents, stock or warehouse legal liability.
 - E. The sponsor shall be provided an endorsed/executed copy of the insurance policies that cover the food and supplies.

L. Certifications

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

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

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

M. Miscellaneous

1. Emergency Notifications.

- a. Sponsor shall notify FSMC personnel of any interruption in utility service of which it has knowledge. Notification will be provided to:
Name: _____ Title: _____
Telephone number: _____ Alternate telephone number: _____
- b. Sponsor shall notify FSMC personnel of any delay in the program start or the closing of site(s) due to snow or other emergency situations. Notification will be provided to:
Name: _____ Title: _____
Telephone number: _____ Alternate telephone number: _____

2. Governing Law. This Contract is governed by and shall be construed in accordance with Colorado law.
3. Headings. All headings and formatting contained in this Contract are for convenience of reference only, do not form a part of this Contract, and shall not affect in any way the meaning or interpretation of this Contract.

4. Incorporation/Amendments.

- a. This Contract, which includes the attached Exhibits A – M and sponsor’s RFP and Contract (collectively the “Contract Documents”), any additional agreements contained in the FSMC proposal contain the entire agreement between the parties with relation to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties or restrictions between the parties with regard thereto other than those specifically set forth in this Contract.
- b. In the event of a conflict between or among any of the terms of the Contract Documents, such conflicts shall be resolved by referring to the Contract Documents in the following order of priority:
 - i. Contract;
 - ii. FSMC proposal documents identified as (a) _____, (b) _____, and (c) _____ ; and
 - iii. Sponsor’s RFP. No modification or amendment to this Contract shall become valid unless made in writing, signed by the parties, and approved by CDE (if over \$150,000).

5. Indemnity.

- a. Except as otherwise expressly provided in this Contract, FSMC will defend, indemnify, and hold sponsor harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys’ fees and court costs that may rise because of the actions of FSMC, its agents or employees in the performance of its obligations under this Contract, except to the extent any such claims or actions result from the negligence of sponsor, its employees or agents.
- b. This clause shall survive termination of this Contract.

6. Nondiscrimination / Civil Rights.

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment 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 is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights; 1400 Independence Avenue, SW Washington, D.C. 20250-9410;(2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. This institution is an equal opportunity provider.

7. Notices.

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

To Sponsor: Food Bank of the Rockies 10700 E. 45th Avenue, Denver CO 80239

To FSMC:

Copy to:

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

8. Severability. If one or more provisions of this Contract, or the application of any provision to either party or circumstance is held invalid, unenforceable or illegal in any respect, the remainder of this Contract and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.
9. Silence, absence or omission. Any silence, absence, or omission from the Contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by SPONSOR are to be used.
10. Subcontract/Assignment. The vendor/ contractor shall not subcontract for the total meal, or for the assembly of the meal, and shall not assign, without the advance written consent of the sponsor and CDE, this contract or any interest therein. The vendor/contractor must assure the sponsor in writing that this will not inflate costs or lessen control of the quality and supply of the meals. In the event of any assignment, the contractor shall remain liable to the sponsor as principal for the performance of all obligations under this contract.
11. Waiver. The failure of FSMC or sponsor to exercise any right or remedy available under this Contract upon the other party's breach of the terms, covenants or conditions of this Contract or the failure to demand prompt performance of any obligation under this Contract shall not be deemed a waiver of such right or remedy; of the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

IV. AGREEMENT

Offeror certifies that the FSMC shall operate in accordance with all applicable state and federal regulations.

Offeror certifies that all terms and conditions within the Proposal shall be considered a part of this Contract as if incorporated therein.

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

This Contract shall be in effect for one year and may be renewed by mutual agreement for up to four additional one-year periods.

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

ATTEST:

Name of Sponsor

Signature of Authorized Representative

Typed Name of Authorized Representative

Title

Date Signed

ATTEST:

Name of FSMC

Signature of Authorized Representative

Typed Name of Authorized Representative

Title

Date Signed

SECTION A: GENERAL PROVISIONS

1. Equal Opportunity

The contractor (FSMC) shall comply with Title VI of the Civil Rights Act of 1964 (Race, National Origin, Color), Title IX of the Education Amendments of 1972 (Sex), Section 504 of the Rehabilitation Act of 1973 (Disability), the Age Discrimination Act of 1975 (Age), and the USDA's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b); including any additions or amendments.

2. Clean Air and Water

If this contract is in excess of \$150,000, the sponsor and FSMC shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 USC 1857), or the Federal Water Pollution Control Act (33 USC 1319), as amended.

3. Certifications

FSMC shall execute and comply with the following certifications:

- a) Suspension/debarment certification shall be provided by: (1) the sponsor accessing the *Excluded Parties List System* <https://www.epls.gov> (or, as applicable, the System for Award Management (SAM), which is available at <https://www.sam.gov>), printing the page from the *Excluded Parties List System* (or SAM system), and maintaining such record with other supporting documentation to demonstrate that the FSMC is not suspended or debarred, or (2) that by signing this Contract the FSMC certifies that they have not been suspended or debarred prior to Program participation.
- b) Exhibit E: Anti-Collusion Affidavit, which is attached and fully incorporated herein.
- c) Exhibit F: Certification Regarding Lobbying, which is attached and fully incorporated herein.
- d) Exhibit G: Standard Form – LLL, Disclosure of Lobbying Activities, which is attached and fully incorporated herein.

Exhibit A: SITE INFORMATION LIST INSTRUCTIONS FOR COMPLETION

(see separate attachment "FBR Site List for RFP-Fresh Meals")

Sponsor Name	Sponsor Address	Sponsor Contact Person/Phone Number
--------------	-----------------	-------------------------------------

Exhibit B: MENU CYCLES : Bidder shall attach a cycle menu for each site for each meal type.

Exhibit C: Summer Food Service Program Meal Pattern Requirements

Food Component	Breakfast	Lunch or Supper	Snack ² Serve any two of the four components (must be two DIFFERENT components)
Milk, fluid ³	1 cup (8 fluid ounces)	1 cup (8 fluid ounces)	1 cup (8 fluid ounces)
Vegetables and Fruits Vegetable(s) and/or fruit(s) or Full-strength fruit or vegetable juice ⁴ or An equivalent quantity of any combination of the above vegetables and fruits	½ cup ½ cup (4 fluid ounces)	¾ cup total ^{4,5}	¾ cup ¾ cup (6 fluid ounces)
Grains and Breads ⁶ Bread or Cornbread, biscuits, rolls, muffins, etc. or Cold dry cereal or Cooked cereal or Cooked pasta or noodle products or Cooked cereal grains or An equivalent quantity of any combination of the above grains and breads	1 slice 1 serving ¾ cup or 1 ounce ½ cup ½ cup ½ cup	1 slice 1 serving ¾ cup or 1 ounce ½ cup ½ cup ½ cup	1 slice 1 serving ¾ cup or 1 ounce ½ cup ½ cup ½ cup
Meat and Meat Alternates Lean meat or poultry or fish ⁷ or Alternate protein products ⁸ or Cheese or Cottage cheese or Eggs or Cooked dry beans or peas or Peanut butter or soy nut butter or other nut or seed butters or Peanuts or soy nuts or tree nuts or seeds ⁹ or Yogurt ¹⁰ , plain or flavored, unsweetened or sweetened or An equivalent quantity of any combination of the above meat and meat alternates	Optional	2 ounces 2 ounces 2 ounces ½ cup 1 large egg ½ cup 4 tablespoons 1 ounce = 50 percent 8 ounces or 1 cup	1 ounce 1 ounce 1 ounce ¼ cup ½ large egg ¼ cup 2 tablespoons 1 ounce 4 ounces or ½ cup

¹The meal pattern shows the minimum amounts of each component that must be made available to each child to claim reimbursement for the meal. Children may be served larger portions but not less than the minimum quantities specified.

²Snack must consist of two food items, each from a different food component. Juice cannot be served when milk is the only other snack component.

³Milk must be provided as a beverage. The Colorado Department of Education requires that milk provided is 1% (low-fat) or skim (fat-free).

⁴At lunch and supper, full-strength 100 percent vegetable or fruit juice cannot be counted to meet more than half (½ cup) of this requirement.

⁵Serve two or more different kinds of vegetables and/or fruits, i.e., two vegetables, two fruits or one vegetable and one fruit.

⁶Bread, pasta or noodle products and cereal grains must be whole grain or enriched. Cornbread, biscuits, rolls, muffins and other breads must be made with whole-grain or enriched flour or meal. Breakfast cereals must be whole grain, enriched or fortified. Bran and germ are credited the same as enriched or whole-grain meal or flour.

⁷Edible portion of cooked lean meat, poultry or fish as served, e.g., cooked lean meat without bone.

⁸Alternate protein products must meet the requirements specified by the U.S. Department of Agriculture (USDA) in Appendix A to Part 225 of the SFSP regulations.

⁹At lunch or supper, nuts and seeds cannot meet more than 50 percent of the meat/meat alternates requirement. They must be combined with another meat/meat alternate to meet the requirement. One ounce of nuts or seeds equals one ounce of cooked lean meat, poultry or fish.

¹⁰To increase nutrient variety, yogurt should not be served when milk is the only other snack component.

Note: If the Colorado Department of Education Office of School Nutrition approves the sponsor to serve smaller portion sizes to children under 6 years or larger portions to children 12-18 years, the sponsor must meet the meal patterns specified in the Child and Adult Care Food Program (CACFP) regulations 7 CFR 226.20.

Exhibit C-1 CACFP Meal Pattern

Child Meal and Snack Requirements

Current Meal Patterns (may be followed through September 30, 2017)			
Food Components for Ages 6-12	Breakfast	Lunch/Supper	Snack¹
Milk Milk, fluid low-fat (1%) or fat-free (skim)	1 cup	1 cup	1 cup
Vegetables and/or Fruits² Vegetable(s) and/or fruit; or Vegetable or fruit juice (full strength) ³	½ cup ½ cup	¾ cup ¾ cup (6 fl oz)	¾ cup ¾ cup (6 fl oz)
Grains and Breads⁴ Bread; or Cornbread, biscuits, rolls, or muffins, etc.; or Cold dry cereal; or Cooked pasta or noodle product; or Cooked cereal or cereal grains or an equivalent quantity of any combination of grains/breads	1 slice 1 serving ¾ cup or 1 oz ½ cup ½ cup	1 slice 1 serving ¾ cup or 1 oz ½ cup ½ cup	1 slice 1 serving ¾ cup or 1 oz ½ cup ½ cup
Meat and Meat Alternates⁵ Lean meat or poultry or fish; or Cheese; or Eggs; or Alternate protein product; or Cooked dry beans or peas; or Peanut butter or soynut butter or other nut or seed butters; or Peanuts or soynuts or tree nuts or seeds ⁶ ; or Yogurt ⁷ ; or	A meat/ meat alternate is not required at breakfast	2 oz 2 oz 1 large egg 2 oz ½ cup 4 tbsp 1 oz = 50% 8 oz or 1 cup	1 oz 1 oz ½ large egg 1 oz ¼ cup 2 tbsp 1 oz 4 oz or ½ cup

An equivalent quantity of any combination of the above meat alternates			
--	--	--	--

Table Notes

1. For snacks, 2 of the 4 components must be provided for a meal to qualify as reimbursable.
2. At breakfast, lunch or supper serve two or more kinds of vegetable(s) and/or fruit(s) or combination of both.
3. Full-strength fruit/vegetable juice may be counted to meet no more than ½ of this requirement.
4. Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched flour.
5. A serving size consists of the edible portion of the cooked lean meat or poultry or fish.
6. Nuts and seeds may meet only one -half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch/supper requirement.
7. Yogurt may be plain or flavored, unsweetened or sweetened.

Updated Meal Pattern (must follow no later than October 1, 2017)			
Food Components for Ages 6-12 and Ages 13-18 ¹	Breakfast	Lunch/Supper	Snack ²
Milk Milk, unflavored fluid low-fat (1%) or fat-free (skim), or flavored fat-free (skim)	1 cup	1 cup	1 cup
Vegetable(s)³	½ cup	½ cup	¾ cup
Fruit^{3,4}		¼ cup	¾ cup
Grains^{5,6} Whole grain-rich or enriched bread; or Whole grain-rich or enriched bread product, such as biscuit, roll, muffin; or Whole grain-rich, enriched, or fortified cooked breakfast cereal ⁷ , cereal grain, and/or pasta; or Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{7,8} : <ul style="list-style-type: none"> • Flakes or rounds • Puffed cereal • Granola 	1 slice 1 serving ½ cup <ul style="list-style-type: none"> • 1 cup • 1 ¼ cup • ¼ cup 	1 slice 1 serving ½ cup ---	1 slice 1 serving ½ cup <ul style="list-style-type: none"> • 1 cup • 1 ¼ cup • ¼ cup
Meat and Meat Alternates⁹ Lean meat or poultry or fish; or	A meat/ meat alternate is not	2 oz	1 oz

Cheese; or	required at breakfast but may be used to substitute the entire grains component a maximum of 3 times per week.	2 oz	1 oz
Eggs; or		1 large egg	1/2 large egg
Tofu, soy product, or alternate protein product ¹⁰ ; or		2 oz	1 oz
Cooked dry beans or peas; or		1/2 cup	1/4 cup
Peanut butter or soynut butter or other nut or seed butters; or		4 tbsp	2 tbsp
Peanuts or soynuts or tree nuts or seeds ¹¹ ; or		1 oz = 50%	1/2 oz = 50%
Yogurt ¹² ; or		8 oz or 1 cup	4 oz or 1/2 cup
An equivalent quantity of any combination of the above meat alternates			

Table Notes

1. Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs
2. Select 2 of the 5 components for a reimbursable snack. Only one of the two components may be a beverage.
3. Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
4. A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served. Fruit cannot be used to meet the vegetable requirement.
5. All grains must be made with enriched or whole grain meal or flour. At least one serving per day, across all eating occasions, must be whole-grain rich. Grain-based desserts do not count towards the grains requirement.
6. Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.
7. Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).
8. Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is 3/4 cup for children ages 6-12 years and ages 13-18 years.
9. A serving size consists of the edible portion of the cooked lean meat or poultry or fish.
10. Alternate protein products must meet the requirements in Appendix A to Part 226.
11. Nuts and seeds may meet only one -half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch/supper requirement.
12. Yogurt may be plain or flavored, unsweetened or sweetened, but must contain no more than 23 grams of total sugars per 6 ounces.

Exhibit D: UNIT PRICE SCHEDULE

Instructions:

Sponsor: Complete Items (a), (b) and (c) for each Meal Type.

Bidder: Complete Items (d) and (e) for each Meal Type.

(a) Meal Type (i.e., Lunch)	(b) ¹ Average Daily Meals Needed	(c) ² Total Number of Meals	(d) ³ Unit Cost	(e) Total Bid
Breakfast	157	7380		
AM Snack				
Lunch	937	90936		
PM Snack				
Supper	1458	163668		

Adjustments:

If the average daily meals billed is less than the **Average Daily Meals Needed** (per item (b) above), a one time adjustment to the unit price will be made as follows:

Average Daily Meals Billed ÷ Average Daily Meals Needed	Multiply "Unit Cost" (d) by this Amount
81 – 90%	1.05
71 – 80%	1.10
61 – 70%	1.15
51 – 60%	1.20
50% or Below	1.30

Example: If the "Average Daily Meals Billed" ÷ the "Average Daily Meals Needed" (item (b) above) = .82 or 82%, multiply the "Unit Cost" (item (d) above) by 1.05.

The FSMC will invoice the sponsor at the 100% Unit Cost indicated above bi-weekly. To determine if an additional cost per meal is due to the FSMC, complete the following calculation. Divide the total number of meals billed by type (breakfast, lunch, etc.) for the total length of the SFSP by the total number of days the SFSP was operated. Any additional changes resulting from this higher "adjustment" will be reflected in the final statement from the FSMC.

Note: The Unit Cost per meal **may not exceed** the maximum operational reimbursement for each meal type as stated in Part 7 CFR 225 of the Federal regulations.

¹ Obtained from the Schedule A, by dividing total meals for each specific meals type by the greatest number of days operated by the site.

² Obtained from Schedule A by totaling the "Total Meals" for each specific meal type.

³ "Unit Cost" specified is that cost based on 100% Average Daily Meals Needed.

Exhibit D-1: SUMMARY BID SHEET

Meal Type	Total Number of Meals	Unit Cost¹	Total
Breakfast		\$	\$
AM Snack		\$	\$
Lunch		\$	\$
PM Snack		\$	\$
Supper		\$	\$
TOTAL		\$	\$

¹ "Unit Cost" must be identical to those unit costs listed on the Unit Price Schedule (Schedule D).

EXHIBIT E: DEBARMENT AND SUSPENSION FORM

Debarment and Suspension and Other Responsibility Matters Primary Covered Transactions

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

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

Business Name _____ Date _____
 Name and Title of Authorized Representative _____
 Signature of Authorized Representative _____

EXHIBIT F: CERTIFICATION REGARDING LOBBYING

Certification Regarding Lobbying: Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.

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

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

No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

Name/Address of Food Service Management Company/Vendor _____

Name/Title of Submitting Official _____ Signature _____ Date _____

Exhibit G: ANTI-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

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

Signed _____

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

Notary Public (or Clerk or Judge) _____

My commission expires _____

Exhibit H: ADDENDUM TO THE SUMMER FOOD SERVICE PROGRAM FOOD SERVICE MANAGEMENT CONTRACT

The Food Bank of the Rockies and _____
(Institution) (Food Service Management Company)

hold/will hold a contract for the provision of meals and snacks funded by the Child and Adult Care Food Program (CACFP) in addition to meals and snacks funded by the Summer Food Service Program.

The contract term is June 1, 2017 through May 31, 2018.

This purpose of this Addendum is to include provisions in the contract pertaining to meals and snacks for the Child and Adult Care Food Program (CACFP).

Meals and snacks provided for the CACFP shall meet the meal pattern requirements outlined in the USDA Food Program Regulations under 7 C.F.R. 226.20. In addition, both parties agree to operate in accordance with the applicable requirements of USDA Food Program Regulations under 7 C.F.R. 226.

If the contract is valid prior to the agreed upon addition of CACFP meals and snacks, both parties agree the additions shall not change the terms of the existing contract, but shall be made valid as if they are included in the original stated contract. The institution also certifies the addition of the CACFP meals and snacks does not constitute a material change to the contract, defined as: Any change made to a contract after it has been awarded that alters the terms and conditions of that contract substantially enough that had other respondents known of these changes in advance, they could have bid differently and more competitively.

Food Bank of the Rockies

<Insert FSMC Name>

Signature of Authorized Individual

Signature of Authorized Individual

Printed Name of Authorized Individual

Printed Name of Authorized Individual

Title

Title

Date

Date