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**Request for Proposal**

**to**

**Manage a School Food Service Program**

**Ness City – USD 303**

**March 23, 2015**

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# Request for Proposal to Manage a School Food Service Program

Ness City Schools – USD 303 invites written proposals from qualified companies for management of the school system's food service operation, which includes the programs, checked below:

- School Breakfast Program (SBP)
- National School Lunch Program (NSLP)
- Afterschool Snack Program (ASP)
- Special Milk Program (SMP)
- Fresh Fruit and Vegetable Program (FFVP), as described in Exhibit A, 12, C.
- Summer Food Service Program (SFSP), as described in Exhibit A, 12, A.
- Seamless Summer Option
- Child and Adult Care Food Program (CACFP), including At-Risk Afterschool Meals, as described in Exhibit A, 12, D.
- Internal catering services as described in Exhibit A, 13, A.
- Concessions as described in Exhibit A, 13, B.
- A la carte items/meals
- Other: \_\_\_\_\_

The successful company shall be required to enter into a contract that incorporates this Request for Proposal (RFP), including all of its exhibits, and the contractor's Proposal. Significant general contract terms and conditions will include, but are not limited to those in this RFP.

If necessary and agreed upon by both the Sponsor and Contractor, an addendum to this RFP will be submitted to Kansas State Department of Education (KSDE), Child Nutrition & Wellness for approval. The RFP and subsequent signed agreement will be approved by KSDE prior to the contract implementation. Sponsor may not amend the agreement without prior approval from KSDE.

For guidance on completing and submitting a proposal, refer to pages 5 through 6 of this RFP.

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### Sponsor Exhibits

- Exhibit A Sponsor Profile
- Exhibit B 21-Day Cycle Menu
- Exhibit C Purchasing Specification
- Exhibit D Participation for Prior School Year (2013-2014)
- Exhibit E Price Schedule for Current School Year (2014-2015)
- Exhibit F Selection Criteria
- Exhibit G Division of Costs for the Food Service Program
- Exhibit H Division of Responsibilities for the Food Service Program
- Exhibit I Sponsor Policies Impacting the Food Service Program

### Contractor Exhibits

- Exhibit J Contractor Profile
- Exhibit K Certificate of Independent Price Determination
- Exhibit L Miscellaneous Contractor Proposals
- Exhibit N Food Service Management Company Fee Proposal
- Exhibit O Personnel and Staffing Plans
- Exhibit P Plans to Increase Program Participation
- Exhibit Q Anti-Kickback Clause

# Request for Proposal to Manage a School Food Service Program

## I. Background of Requestor

Ness City Schools – USD 303 (hereinafter referred to as the SPONSOR) administers the U.S. Department of Agriculture's Child Nutrition Programs. The company issuing the proposal, under these specifications, will be hereinafter referred to as the CONTRACTOR. The contract will be between the CONTRACTOR and the SPONSOR. Information about the SPONSOR's organization is provided in Exhibit A - Sponsor Profile.

The Child Nutrition & Wellness Section of the Kansas State Department of Education, hereinafter referred to as KSDE, administers Child Nutrition Programs at the State level. Federal regulations require the aforementioned contract to be approved by KSDE prior to implementation.

## II. Purpose of Request

The purpose of this solicitation is to provide for the management of the SPONSOR's school food service operation. The CONTRACTOR will assume responsibility for the efficient management of the food service program including the responsibilities specified in Exhibit H, Division of Responsibilities for the Food Service Program.

## III. Time Schedule

The SPONSOR will use the following time line to select a food service management company:

<u>Date/Time</u>	<u>Task</u>
March 23, 2015	Advertise Request for Proposal
April 8, 2015 2:00 pm	Pre-proposal Conference and Visitation
May 6, 2015 12:00 pm	Deadline for Offerors to Submit Proposals
May 7, 2015	Contract Negotiations Begin, if applicable
May 11, 2015	Award of Contract by Sponsor's Governing Board

## IV. Instructions

- A. Further information or copies of the Request for Proposal may be obtained by writing or calling Derek Reinhardt 414 East Chestnut Ness City, KS 67560 [derek.reinhardt@usd303.org](mailto:derek.reinhardt@usd303.org).
- B. Three copies of the proposal must be submitted in sealed envelopes or containers marked plainly and prominently as follows:  
  
"Proposal to Manage a School Food Service Program for USD 303 – Ness City."
- C. The proposal should be addressed to:  
Derek Reinhardt 414 East Chestnut Ness City, KS 67560
- D. Proposals are due no later than Wednesday, May 6, 2015 at 12:00 pm. No proposals will be

accepted after this deadline.

- E. Documents submitted by the Contractor as a response to this Sponsor's Request for Proposal are property of the Sponsor and Contractor relinquishes the rights to the response of this proposal as submitted by the Contractor.
- F. The SPONSOR, by means of its Proposal Evaluation Committee, reserves the right to solicit best and final offers from the three most responsive proposers after a joint conference with these proposers.
- G. The proposer is responsible for personally examining the job sites where work under the proposal document is to be performed. Such visits will be scheduled through Derek Reinhardt 414 East Chestnut Ness City, KS 67560 [derek.reinhardt@usd303.org](mailto:derek.reinhardt@usd303.org) 785 798-2210.
- H. A pre-proposal conference to review the contents of the Request for Proposal and to arrange inspection visits will be held on Wednesday, April 8, 2015, at 2:00 AM at Ness City High School.
- I. I. The FSMC or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the FSMCs own risk and cannot secure relief on the plea of error. Thus the SPONSOR will accept no pleas of ignorance regarding any item in this contract as a basis for any claim by the CONTRACTOR for extra charges or fees.
- J. Please ensure that all of the following required exhibits are completed and included in your proposal package.

- Exhibit J Contractor Profile
- Exhibit K Certificate of Independent Price Determination
- Exhibit L Miscellaneous Contractor Proposals
- Exhibit N Food Service Management Company Fee Proposal
- Exhibit O Personnel and Staffing Plans
- Exhibit P Plans to Increase Program Participation
- Exhibit Q Anti-Kickback Clause  
Performance Security as specified in Section XIV, as applicable

- K. Prior to the proposal submission deadline, the proposer shall be required to register with Child Nutrition and Wellness, Kansas State Department of Education. Registration requirements include the completion and approval of the State Of Kansas Food Service Management Company Application for Registration form, and the Certification Regarding Lobbying Activities and Disclosure of Lobbying Activities. The contractor's principals cannot be disbarred, suspended or disqualified from participation in the USDA Child Nutrition Programs as identified on the federal Excluded Parties List System. The proposer awarded the contract must annually meet the registration requirements.



## V. Selection Criteria

The Selection Criteria (Exhibit F) will be used by the SPONSOR to determine which Food Service Management Companies will be selected for special consideration. The final selection will be subject to review and approval by the SPONSOR's Proposal Evaluation Committee's recommendation as to what contractor should be awarded the contract based on the scoring criteria listed in Exhibit F. Selection of not more than three (3) contractors for special consideration and one (1) contractor for the ultimate work will be based on the following criteria:

- A. Qualifications / Experience of Management Team (Exhibit J)
- B. Number / Adequacy of Client References (Exhibit J)
- C. Miscellaneous Contractor Proposals (Exhibit L)
- D. Food Service Management Company Fees (Exhibit N)
- E. Personnel Staffing Plans (Exhibit O)
- F. Quality of Food Service (Exhibit B)
- G. Plans to Increase Participation (Exhibit P)

## VI. Basic Program Information

Information in the following exhibits is provided to assist the CONTRACTOR in preparing a response to this Request for Proposal.

- Exhibit A Sponsor Profile
- Exhibit B 21-Day Cycle Menu
- Exhibit C Purchasing Specification
- Exhibit D Participation
- Exhibit E Current Price Schedule
- Exhibit F Selection Criteria
- Exhibit G Division of Costs for the Food Service Program
- Exhibit H Division of Responsibilities for the Food Service Program
- Exhibit I Sponsor Policies Impacting the Food Service Program

## VII. General Requirements

- A. Sponsor Retains Control: The SPONSOR shall retain control of quality, extent and general nature of its food service. The SPONSOR, through its agreement with the Kansas Department of Education to operate the National School Lunch Program, and other USDA Child Nutrition Programs operated under this contract, will be primarily responsible for ensuring that the CONTRACTOR is in compliance with all USDA Program requirements that bear on the CONTRACTOR's operation of the school food service.

- B. Compliance with Laws: The CONTRACTOR shall comply with all Federal, State, and local laws.
- C. The CONTRACTOR shall comply with all of the SPONSOR's building rules and regulations.
- D. Compliance with Child Nutrition Program Laws, Regulations, Guidance and Agreements: The CONTRACTOR shall operate the food service program meeting all requirements under the National School Lunch Act, Child Nutrition Act, and The Healthy Hunger-Free Kids Act. The CONTRACTOR shall conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226, 245, 250 and USDA Food and Nutrition Service instructions and policies. The CONTRACTOR shall comply with the terms of the SPONSOR's Child Nutrition Program agreement with KSDE. The Contractor agrees to comply with the implementation of section 10 of the Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 which requires that all food sold outside of the school meal program, on the school campus and at any time during the school day must meet the nutrition standards set forth in the Interim Final Rule titled "National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010."
- E. Participation Promotion: The CONTRACTOR shall promote maximum participation in the Child Nutrition Programs using the plans described in the RFP, Exhibit P, Plans to Increase Program Participation.
- F. Feeding Eligible Children: The SPONSOR's written policy requiring feeding of eligible children free or at a reduced price shall apply to the CONTRACTOR's food service operation and hereby in all respects be made a part of the agreement.
- G. Health/Nutrition Promotion: The CONTRACTOR shall promote nutrition/health education as required by the local county, State, or Federal governments and as approved by the SPONSOR's board of education. The SPONSOR shall inform the CONTRACTOR of any such requirements.
- H. Environmental: As specified in 7CFR, Section 3016.36(i)(12), the CONTRACTOR and the SPONSOR shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities. Violations shall be reported to the U.S. Department of Agriculture and to the USEPA Assistant Administrator for Enforcement (EN-329).
- I. Energy: The SPONSOR and CONTRACTOR shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (7CFR, Section 3016.36(i)(13)).
- J. Equal Employment: The SPONSOR and CONTRACTOR shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41CFR Part 60) pursuant to 7CFR, Section 3016.36(i)(3).

- K. Work Hours: The SPONSOR and CONTRACTOR shall comply with the Fair Labor Standards Act, as amended, to include Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5) pursuant to 7CFR, Section 3016.36(i)(6).
- L. Nondiscrimination: The SPONSOR and CONTRACTOR shall not discriminate on the basis of disability, race, color, sex, national origin or age as defined by applicable governmental law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning food service personnel pursuant but not limited to Titles VI and VII of the Civil Rights Act of 1964. This fundamental rule of conduct will be clearly communicated to all employees, prospective employees and the community at large. In addition, each part affirms that it is an equal opportunity and affirmative action employer.
- M. Drug Free Workplace: The CONTRACTOR shall comply with the Government-wide Requirements For Drug-Free Workplace (DFW). The DFW requirements include making a good faith effort, on a continuing basis, to maintain a drug-free workplace. Those measures are to: (1) Publish a drug-free workplace statement and establish a drug-free awareness program for employees as identified in 7 CFR 3021.205 through 3021.220; and (2) Take actions concerning employees who are convicted of violating drug statutes in the workplace identified in 7 CFR 3021.225. The statement must be given to each employee who will be engaged in the performance of the contract and that statement must: (a) Tell employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace; (b) Specify the actions that will be taken against employees for violating that prohibition; and (c) Inform each employee that, as a condition of employment under any award, he or she: (1) Will abide by the terms of the statement; and (2) Must notify in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

## **VIII. Food Service Operations Requirements**

- A. The CONTRACTOR shall provide specified types of service in the locations listed in the RFP, Exhibit A, Sponsor Profile. The CONTRACTOR and the SPONSOR may agree to add or delete locations.
- B. The CONTRACTOR shall be entitled to use the SPONSOR's facilities for the preparation and service in regards to the terms of this RFP and subsequent agreement of food at the sites listed in the RFP and Exhibit A, Sponsor Profile.
- C. If applicable, per approval by KSDE and if the CONTRACTOR is in agreement, the SPONSOR may request that the CONTRACTOR provide additional food service programs (i.e., Afterschool Snack Program, Summer, CACFP, Breakfast) if the sponsor's needs dictate these services would be beneficial to the SPONSOR. Should the CONTRACTOR agree to provide additional food service programs the meal equivalent factor shall be used to bill the SPONSOR for meals provided in the additional food service program(s). Otherwise, a fee structure differentiating from the fee structure as specified in this RFP would constitute a material change to the agreement.
- D. The SPONSOR reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SPONSOR's regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the school lunch and/or breakfast and/or special milk and/or after school care snack programs, and is in compliance with State and Federal laws.

- E. Auxiliary Businesses (*not applicable*): The following services are included in this Request for Proposal:
1. Special Services/Internal Catering/Concessions: The CONTRACTOR shall not provide for special functions on a per event basis to be mutually agreed upon with consent from the SPONSOR (refer to Exhibit A, item 13 for specific service requests).
  2. Vending: The CONTRACTOR shall not provide vended beverages and snacks. All vended items shall comply with the National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as required by the Healthy, Hunger-Free Kids Act of 2010.
  3. External Catering, not for the Sponsor's benefit, and all other items and programs not specifically addressed in this Request for Proposal require a separate contract. All costs associated (direct and indirect) with external catering (not for sponsors benefit and not specified in Exhibit A, 13) will be addressed in a separate contract.
- The CONTRACTOR shall maintain separate and proper accounting and control for each auxiliary business it operates pursuant to this agreement.
- All revenues from the operation of an auxiliary business/program, less all relevant cost and expenses, shall accrue to the SPONSOR. Revenues must equal or exceed all costs to the school food service, direct and indirect.
- F. Menu Cycle: The CONTRACTOR must adhere to the menu cycle specified in Exhibit B for the first twenty-one (21) days of meal service. Changes thereafter may be made with approval from the SPONSOR.
- G. Menu Planning and Approval: The CONTRACTOR will be responsible for all menu planning. The SPONSOR shall review and approve all menus prior to preparation and service of food. The CONTRACTOR shall provide proposed menus to the SPONSOR 15 business days in advance of the service date. The SPONSOR shall review and approve the menus 10 business days in advance of the service date.
- H. Menu Standards: Menu standards, as presented in the twenty-one (21) day cycle menu, must be maintained as to type and quality of meal service. The CONTRACTOR shall serve reimbursable meals that comply with the Nutrition Standards for School Meals established by USDA in Federal regulations for the National School Lunch Program and the School Breakfast Program, as well as The Healthy, Hunger- Free Kids Act of 2010. Refer to Attachment 1, Final Rule Nutrition Standards in the National School Lunch and School Breakfast Programs.
- I. Menu Choices: The CONTRACTOR shall provide choices of menu items for lunches and breakfasts.
- J. Special Diets: In accordance with Federal regulations and FNS Instruction 783-2, the CONTRACTOR shall make substitutions in reimbursable meals as specified by a recognized medical authority for individual participating children unable, because of a disability or other special dietary need, to consume specified foods. The SPONSOR shall notify the CONTRACTOR of any such special dietary needs.

- K. A la carte: For the purposes of determining a meal equivalent, a la carte revenue will be divided by a factor provided by KSDE that is based upon the total Federal and State reimbursement for free lunches in effect at the inception of the contract. This factor shall remain constant for the duration of the contract unless negotiated at the time of renewal. The meal equivalency factor increases shall not exceed the changes in the Consumer Price Index Rate for Food Away from Home (National) series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor, for the 12 months preceding March of the renewal year. In order to offer a la carte food service, the CONTRACTOR must also offer free, reduced price and full price (i.e. paid) reimbursable meals to all eligible children. The SPONSOR shall approve all a la carte items served by the CONTRACTOR in advance of sale. The Sponsor will retain the sole authority to determine a la carte prices. All a la carte items shall comply with the National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as required by the Healthy, Hunger-Free Kids Act of 2010.
- L. Kitchen Maintenance: The CONTRACTOR will be responsible for maintaining the kitchen area and meeting all safety and sanitation laws and regulations.
- M. Food Safety and Sanitation: The CONTRACTOR will develop and follow the Hazard Analysis Critical Control Point (HACCP) plan which complies with the Kansas State Department of Education and Kansas Department of Agriculture standards for the process approach to HACCP implementation. The CONTRACTOR will be responsible for routine cleaning and housekeeping in the food preparation and service areas including food service equipment, kitchen floors, hoods, and grease filters.
- N. Unacceptable Meals: No payment shall be made for meals that are spoiled, unwholesome or disallowed by appropriate authority at time of service; or those that do not meet the specifications developed by the SPONSOR; or do not otherwise meet the intent of this agreement; provided however, that no deduction shall be made unless the SPONSOR shall give the CONTRACTOR written notification, specifying the number of meals for which the SPONSOR intends to deduct payment and setting forth the reasons for the deduction.
- O. Wellness Plan: The CONTRACTOR shall follow the SPONSOR's local Wellness Policy that includes the areas of nutrition, nutrition promotion and education, physical activity and integrated school wellness. The CONTRACTOR's management team member shall serve as a food service representative member of the local wellness committee.
- P. USDA Donated Foods and Commodities: At the time of the RFP, Kansas schools receive cash-in-lieu of commodities. If that should change during the duration of the contract or during the subsequent four (4) renewal years, the following provisions would be enacted: Any federally donated commodities received by the SPONSOR and made available to the CONTRACTOR will accrue only to the SPONSOR's food service operation and be utilized therein. Such donated commodities shall be kept separate and apart from the purchased inventory of food and supplies. To the maximum extent feasible, the CONTRACTOR shall use any food donated by USDA for the use of the SPONSOR in the preparation of the meals and other food served to children. The CONTRACTOR shall maintain adequate storage practices, inventory and control of such donated foods to ensure that its use and responsibility for the donated foods is in compliance with the SPONSOR's agreement with the State distributing agency. The CONTRACTOR shall give the SPONSOR, USDA, and appropriate State Representatives access to the storage areas for donated commodities.

- Q. Food Specifications: The CONTRACTOR will provide detailed specifications for each food component served as specified in 7 CFR Part 210 and adhere to those standards described in Exhibit C, Purchasing Specifications.
- R. Price of Meals: The SPONSOR will retain control of establishing prices for reimbursable meals, a la carte service, vending machines and adult meals. Prices will be altered only at the direction of the Sponsor.
- S. Adult Meals: The SPONSOR's and the CONTRACTOR's employees may purchase meals/milk/snacks at the option and direction of the SPONSOR at prices approved by the SPONSOR. Charges billed to the Sponsor by the Contractor for meals/milk/snack will be billed per the meal equivalent noted in Exhibit N.
- T. Food Service Advisory Committee: The SPONSOR, with the assistance of the CONTRACTOR, shall establish an advisory committee representative of students, teachers, and parents to assist in menu planning. The advisory committee shall meet, at a minimum, semi-annually. Each semester, the CONTRACTOR shall cooperate with the SPONSOR to prepare an action plan for consideration by the advisory committee.
- U. Summer Feeding Programs: If within the term of the contract, the SPONSOR reserves the right to participate in the USDA Summer Food Service Program or Seamless Summer Option and the CONTRACTOR shall operate the program in conformance to 7CFR 225.
- V. Fresh Fruit and Vegetable Program: If within the term of the contract, the CONTRACTOR will maintain records of labor schedules identifying positions and salaries allocated to the Fresh Fruit and Vegetable Program (FFVP) and food receipts identifying exact products and prices used explicitly for the FFVP. If administrative costs are being claimed by the Sponsor then the detailed documentation of actual administrative hours worked must be maintained by the Contractor. These records will be used to support the Claim for Reimbursement. The CONTRACTOR shall report claim information to the SPONSOR promptly at the end of each month. Such records shall be submitted to the SPONSOR monthly and shall be retained in accordance with 210.23(c). The SPONSOR shall:
- The SPONSOR shall apprise the FSMC of all FFVP policies and rules to guarantee the program is operated in compliance with FNS standards.
  - Regularly monitor FSMC operations to ensure compliance with relevant FFVP requirements and all provisions of the contract.
- W. Water Availability: Water must be available during meal service to children at no charge in the place where breakfast and lunch meals are served.

## **IX. Sponsor Rights and Responsibilities**

- A. School Day: The SPONSOR reserves the right to cancel or shorten any school day. A twenty-four (24) hour notice will be given to the CONTRACTOR in non-emergency situations. In the event of emergency closure, the SPONSOR shall provide the CONTRACTOR with as much advance notice of the closure as possible, and the SPONSOR will not be charged on that day(s).

- B. Locations of Program: The SPONSOR reserves the right to add or delete locations of food service from the list of schools included in the program as conditions may change; however, if SPONSOR does add or delete locations of food service from the list of schools included in the program, it is duly noted by SPONSOR that such action may result in a material change to the agreement and this would constitute either a rebidding of the initial contract or bidding a separate contract to facilitate this addition.
- C. Grade Organization: The SPONSOR reserves the right to make any grade level changes it deems necessary.
- D. Use of Facilities: The SPONSOR reserves the right to use school food service preparation areas at times other than when facilities are in use by the CONTRACTOR; however, the CONTRACTOR may require an employee to be present and to be reimbursed by the user.
- E. Offer Vs. Serve: The SPONSOR reserves the right to change all but the senior high school lunch program from an “offer” program to a “serve” program at any time it deems to do so.
- F. The SPONSOR shall be legally responsible for the conduct of the food service program per the Sponsor’s Program Agreement with KSDE.
- G. The SPONSOR’s authorized representatives shall have access to the food service facilities at all times.
- H. The SPONSOR may make reasonable regulations with respect to the operation of the food service program.
- I. The SPONSOR shall supervise and monitor the food service program in such manner as will ensure compliance with all applicable rules and regulations of KSDE and the United States Department of Agriculture (USDA).
- J. The SPONSOR shall be responsible for ensuring resolution of program review and audit findings.
- K. The SPONSOR shall be solely responsible for implementation of its free and reduced price meal policy including development, distribution, approval and maintenance of free and reduced price applications; direct certification and verification activities. These responsibilities shall not be delegated to the CONTRACTOR to any degree.
- L. If the SPONSOR uses the facilities for extracurricular activities before or after the SPONSOR’s regularly scheduled lunch or breakfast period, the SPONSOR shall return facilities and equipment to the CONTRACTOR in the same condition as received, normal wear and tear excepted.

## **X. Personnel**

- A. The CONTRACTOR shall be an independent contractor and not an employee of the SPONSOR. Employees of the CONTRACTOR shall not be considered to be employees of the SPONSOR.
- B. The CONTRACTOR shall comply with all Federal and State laws regarding wages and hours of employment.

- C. The CONTRACTOR shall provide Worker's Compensation and unemployment insurance for its employees.
- D. The CONTRACTOR shall instruct its employees to abide by the policies, rules and regulations with respect to use of SPONSOR premises as established by the SPONSOR and furnished in writing to the CONTRACTOR.
- E. The CONTRACTOR shall maintain its own personnel policies and fringe benefits for its employees subject to review by the SPONSOR.
- F. The CONTRACTOR shall provide the SPONSOR with a list of its personnel policies.
- G. Staffing patterns shall be mutually agreed upon and be limited to that which is necessary for efficient operation.
- H. If applicable, the CONTRACTOR shall manage the SPONSOR's employees in accordance with the SPONSOR's personnel policies.
- I. The CONTRACTOR shall provide the SPONSOR two full calendar weeks prior to the commencement of operation with a schedule of employees, positions, assigned locations, salaries and hours to be worked. The SPONSOR shall approve the staffing plan prior to commencement of operations and prior to any changes made during the term of the contract.
- J. The SPONSOR shall provide sanitary toilet facilities for the employees of the CONTRACTOR.
- K. The SPONSOR may request in writing the removal of an employee of the CONTRACTOR who violates health requirements or conducts herself/himself in a manner which is detrimental to the physical, mental, or moral well-being of students or of the SPONSOR's personnel. If such removal does not take place within one week of the receipt of the request, a meeting shall be held immediately to resolve the issue.
- L. In the event of the removal or suspension of any such employee, the CONTRACTOR shall restructure its staff without significant disruption in service.
- M. All CONTRACTOR and SPONSOR personnel assigned to each school shall be instructed on the use of all emergency valves, switches, and fire and safety devices in the food preparation, serving and dining areas.
- N. The CONTRACTOR shall cause all employees working in the food service program to comply with the SPONSOR's policies dealing with drug-free workplace and the use of tobacco products.

## **XI. Accountability Requirements**

- A. Contract Administrator: The SPONSOR will name a person to represent them as a liaison between the SPONSOR and the successful CONTRACTOR.
- B. Signature Authority: The SPONSOR shall retain signature authority on the program agreement with KSDE, reduced price and free policy statement and the claims for reimbursement as outlined in Exhibit H, Division of Responsibilities for the Food Service Program.



- C. On-Site Reviews: Authorized representatives of the SPONSOR, the State, and USDA shall have the right to conduct on-site administrative reviews of the food service operation.
- D. Review of Invoices, Bills and Pertinent Records.: The SPONSOR shall oversee all the provisions of the contract and the requirements of the CONTRACTOR. This includes the review of all pertinent records, including bills, invoices, and other relevant information to ensure adherence to the specifications outlined in the contract; including but not limited to the Federal rules and regulations, crediting for and use of USDA Commodities, as applicable, and to ensure that the SPONSOR is not being overcharged or double billed. The CONTRACTOR shall also make available to the SPONSOR all Non-program food costs which would include food, labor and direct costs. All such records shall be kept on file on Sponsor's premises for five (5) years after the end of the Federal fiscal year to which they pertain, or for such other period which the U.S. Secretary of Agriculture or appropriate State officials may from time to time determine; provided however, that if audit findings have not been resolved, the records shall be retained beyond the five (5) year period as long as required for the resolution of the issues raised by the audit.
- E. Recordkeeping:
1. The CONTRACTOR shall maintain such records as the SPONSOR will need to support its claim for reimbursement under the National School Lunch Act, Child Nutrition Act, and The Healthy Hunger-Free Kids Act including accurate records of student participation in the food service program and income records categorized by source, type and category of meal or food service. The CONTRACTOR shall provide necessary reports to the SPONSOR within ten (10) days following the end of each month of operation. The SPONSOR, KSDE, USDA or Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this agreement, for the purpose of making audit, examination, excerpts and transcriptions. These records shall be maintained at a central location approved by the SPONSOR.
  2. The CONTRACTOR's financial accounting shall be in accordance with KSDE rules and regulations, applicable state laws, and Generally Accepted Accounting Principles (GAAP). The CONTRACTOR must retain records to support the SPONSOR's claim for reimbursement of the daily number of meal served, by type. The CONTRACTOR must report daily these meal counts to the SPONSOR.
  3. The CONTRACTOR shall maintain records to support all allowable and documented expenses appearing on the periodic operating statement. These records shall be kept in an orderly fashion according to expense categories as approved by the SPONSOR. Further, copies of all invoices in support of periodic statements will be provided monthly by the CONTRACTOR to the SPONSOR. A detailed expenditure report (in a format mutually agreed to by the parties) will be provided by the CONTRACTOR in addition to summary category reports on a monthly basis.
- F. Reporting:
1. The CONTRACTOR will maintain an information database from which the SPONSOR will be provided weekly, monthly, quarterly, and annual reports in such detail as may be reasonably expected to manage the program.

2. The CONTRACTOR shall maintain information necessary for the sponsor to prepare State, Federal and SPONSOR fiscal and management reports and other special reports as required by government regulations or SPONSOR requirements.
3. The CONTRACTOR shall provide the SPONSOR, in a manner which is understandable to the SPONSOR, a year-end statement of income and expenses for the entire food service program including the auxiliary businesses described in the Exhibit A, Sponsor Profile and section XII, B of this RFP. The SPONSOR reserves the right to have the CONTRACTOR change the statements suitable for their reporting requirements.
4. The CONTRACTOR shall not count meals/milk/snacks served to adults for reimbursement under the National School Lunch Program, and/or the School Breakfast Program, and/or Special Milk Program, and/or After School Care Snack Program.

## **XII. Fee Structure**

The CONTRACTOR shall have the exclusive right to operate the SPONSOR's food service program for the sole benefit of the SPONSOR, students, faculty, staff, invited guests and other persons designated by the SPONSOR, and not as a source of profit to the CONTRACTOR, other than from the Fee Per Meal Type that it receives under this agreement.

### **A. Definition of Costs and Fees**

1. The SPONSOR'S specifications for the price quote and fee structure are found in Exhibit N, Food Service Management Company Fee Proposal.
2. The CONTRACTOR's fee(s) are also found in Exhibit N, Food Service Management Company Fee Proposal
3. Direct operating expenses to be paid by the CONTRACTOR are specified in Exhibit G, Division of Costs for the Food Service Program.

### **B. Management and Meal Fee**

The SPONSOR shall pay the CONTRACTOR a Management and Meal Fee which is a fixed combined fee including (1) a Management Fee per meal/meal equivalent plus (2) a fee per meal/meal equivalent to cover all costs designated for the CONTRACTOR to pay on Exhibit G, Division of Costs for the Food Service Program.

**Billing:** The CONTRACTOR shall bill the SPONSOR for the Total Meal fee as specified in Exhibit N. The CONTRACTOR's bill shall be accompanied by documentation, in a format approved by the SPONSOR, which supports all fees claimed.

### **C. Meal Equivalent**

1. The Meal Equivalent Factor shall be utilized in determining equivalent meals for a la carte sales, other non-reimbursable sales and sales accruing from the SPONSOR'S internal catered events.

2. The CONTRACTOR must convert all receipts from non-reimbursable sales to equivalent meals. Charges to the SPONSOR will be made at the meal equivalent fee according to the following formula:

Amount SPONSOR is to be billed for non-reimbursable sales = (total non-reimbursable sales) / (meal equivalent factor) (X) meal equivalent fee.

D. Labor Costs

The fixed price must include all labor and expenses as shown below. These expenses may not be charged back to the SPONSOR in any other manner.

- Menu development specific to the operation
- Nutrition education materials and program expense
- Design services specific to the operation
- Education program via assembly programs, school room programs, parent/teacher meetings, and school food advisory committee meetings
- Personal representation, visitation, and coverage on a regular basis by a principle of FSMC
- All accounting
- All payroll costs and documentation
- Administrative dietetic, nutritional, sanitation, and personnel advice
- All costs incurred in hiring and relocating, if necessary, the FSMC management team
- All training costs for FSMC employees
- All miscellaneous costs to operate the program; i.e., consumable marketing materials
- One-time performance bond

### **XIII. Financial Management**

A. General

1. The SPONSOR shall retain control of the school food service account and overall financial responsibility for the food service program. The CONTRACTOR shall not have access to the school food service account nor be required to have access to, deposit into, or withdraw any monies in relation to the SPONSOR'S school food service account.
2. All income accruing to the SPONSOR from the food service program shall remain in the program.
3. All monies received including federal, state and local payments to the SPONSOR shall accrue to the food service account.
4. The CONTRACTOR shall coordinate the sale of all meals and the necessary collection procedures and ensure that all revenues are delivered to the SPONSOR who shall deposit all revenues in the appropriate school food service account(s).
5. If reimbursement from KSDE is denied as a direct result of the CONTRACTOR's failure to comply with the provisions of this agreement, the CONTRACTOR shall reimburse the SPONSOR for the amount to which it would otherwise have been entitled.

6. No expenditure may be made from the SPONSOR's nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements under the National School Lunch Act and Child Nutrition Act and 7 CFR 210.21 (c) [3]
7. The SPONSOR shall audit the CONTRACTOR's operations as part of its year-end audit. The SPONSOR may also conduct special audits as it deems appropriate. The CONTRACTOR shall immediately notify the SPONSOR of any audit, inquiry or legal investigation of its records by a local, State, or Federal authority that is in any way related to the SPONSOR.

**B. Payment**

1. The CONTRACTOR shall bill the SPONSOR at the close of each period of program operation according to the fixed fee structure as specified in section XVIII Agreement to Manage a School Food Service Program.
2. The SPONSOR shall make payment to the CONTRACTOR as specified in section XVIII Agreement to Manage a School Food Service Program after the submission of a valid bill for each period of program operation.
3. The fee per meal and meal equivalent is specified in the RFP, Exhibit N, Food Service Management Company Fee Proposal and as described below:

**XIV. Licenses, Permits and Taxes**

The costs of licenses, permits and taxes shall be considered a direct cost of operation as specified in Exhibit G, Division of Costs for the Food Service Program. The term "license" refers to items such as permits and certificates.

- A. Licenses: The SPONSOR shall obtain and keep in effect all Federal, State, and local licenses required for the operation of the food service program. Such licenses shall be posted in a prominent place within the food service area as required by law or regulation.

The SPONSOR shall obtain State or local health license(s) for any facility, in which meals will be prepared for the SPONSOR's food service programs. Per CFR 210.13 (b) *Food safety inspections: Schools shall obtain a minimum of two food safety inspections during each school year conducted by a State or local governmental agency responsible for food safety inspections. They shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to any member of the public upon request.* The SPONSOR is ultimately responsible for ensuring that its sites have been inspected by Kansas Department of Agriculture at least twice per school year. The SPONSOR shall be compensated for any fines assessed by the regulatory agency that result from negligence on the part of the CONTRACTOR or any employees supervised by the CONTRACTOR.

- B. Employee Health Certificates: The SPONSOR and CONTRACTOR shall not employ any persons to perform services in the food service program who do not meet health requirements under the 2012 or most current Kansas Food Code. All employees working in schools shall have upon employment a Certification of Health for School Personnel under KSA 72-5213. The CONTRACTOR shall make available to the SPONSOR copies of the Certification of Health for School Personnel so that the SPONSOR may verify certificates have been obtained and are on file.

- C. Taxes and Fees: The Contractor shall be responsible for paying all applicable taxes and fees as specified in Exhibit G, Division of Costs for the Food Service Program. These include, but are not limited to, excise tax, State and local income taxes, payroll and withholding taxes, unemployment taxes, and workers compensation payments for its employees. The Contractor shall indemnify and hold the Sponsor harmless for all claims related to such taxes and fees.

## **XV. Insurance and Indemnification**

### **A. General Liability:**

1. The CONTRACTOR shall obtain and keep in force during the term of this agreement, for the protection of the SPONSOR and the CONTRACTOR, Comprehensive General Bodily Injury and Property Damage Liability Insurance, to include Fire Legal Liability in the combined single limit of at least \$3 million dollars including but not limited to Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability and Products Liability, covering only the operations and activities of the CONTRACTOR under this agreement.
2. The SPONSOR shall be named an additional insured on all required insurance policies, but only with respect to operations of the CONTRACTOR under its agreement with the SPONSOR.
3. The contract of insurance shall provide for notice to the SPONSOR of cancellation of insurance policies thirty (30) days before such cancellation is to take effect.
4. The CONTRACTOR shall deliver to the SPONSOR a certificate of insurance within thirty (30) days after the execution of this agreement for all required policies. The certificate of insurance shall contain: a) names and addresses of insured; b) titles and locations of the operations to which the insurance applies; c) number of the policy and type or types of insurance in force thereunder on the date of the certificate; d) expiration date of the policy; and 5) a statement that the insurance of the type afforded by the policy applies to all of the operations and activities on and at the site of the project or incidental thereto, which are undertaken by the CONTRACTOR during the performance of the agreement.
5. The SPONSOR shall keep its buildings, including the premises, and all property contained therein insured against loss or damage by fire, explosion and similar casualties.

### **B. Contribution and Indemnification**

1. The CONTRACTOR shall indemnify and hold harmless the SPONSOR or any employee, director, or agent of the SPONSOR, from and against all claims, damages, losses, and expenses (including attorney fees incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages or destruction of property, resulting to any third person or persons, corporation, partnerships or associations caused by any act, omission, failure or neglect of the CONTRACTOR and its agents, servants or employees, or other persons under its supervision or direction including SPONSOR's employees under the supervision of the CONTRACTOR in performance of its obligations under the terms of this agreement.

2. The CONTRACTOR shall not be required to indemnify or hold harmless the SPONSOR from any liability or damages arising from the negligent acts of the SPONSOR.
3. The foregoing provisions concerning contribution and indemnification shall not apply to the CONTRACTOR's or SPONSOR's liability under applicable worker's compensation laws. Nor shall the foregoing be deemed a waiver of any defenses to which the CONTRACTOR or the SPONSOR may be entitled under applicable worker's compensation laws.

C. Worker's Compensation and Unemployment Insurance

The CONTRACTOR shall provide worker's compensation and unemployment insurance as specified on Exhibit G, Division of Costs for the Food Service Program.

## **XVI. Performance Security (Not Applicable)**

The CONTRACTOR shall be required to:

- A. Submit with the proposal, a bid bond payable to the SPONSOR in the amount of \$N/A. Upon award of contract, the SPONSOR shall return all such bid bonds. Performance bonds in the amount of \$N/A will be obtained from the successful CONTRACTOR.
- B. The SPONSOR shall retain the successful proposer's deposit until the CONTRACTOR has faithfully performed all terms of the contract. If the CONTRACTOR provided a bid bond at the time of the RFP, it shall be replaced with a performance bond.

## **XVII. Term of Contract**

- A. Contract Form: The SPONSOR will only consider contracts in a form prescribed by the SPONSOR.
- B. Contract Period: This agreement shall become effective on July 1, 2015, and shall terminate on June 30, 2016, unless an extension is agreed to in accordance with the terms stated below, or unless terminated earlier as provided below.
- C. Contract Extension: The contract between the SPONSOR and CONTRACTOR shall be of duration of not more than 1 year with the option for yearly renewal not to exceed 4 additional years. Pursuant to Federal regulations, any extensions of this contract shall be executed prior to expiration of the preceding contract period and shall be approved by Kansas State Department of Education.

If the SPONSOR elects to renew the contract with the CONTRACTOR, the terms and conditions of the existing contract shall remain substantially unchanged. Any price changes in the contract as part of a renewal will be based upon all CONTRACTOR fees of the original contract. Fee increases shall not exceed the changes in the Consumer Price Index Rate for Food Away from Home (National) series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor, for the 12 months preceding March of the renewal year.

- D. Negotiation of Food Service Management Company (FSMC) Fee(s): The SPONSOR and the CONTRACTOR may negotiate the FSMC Fee(s) and other terms of the agreement beginning no later than six (6) months prior to the end of the contract period, and concluding no later than three (3) months prior to the end of the contract period, unless otherwise agreed upon by the parties. Any increases in FSMC Fee(s) in subsequent agreements shall be agreed to by the parties.
- E. Material Breach: In the event either party commits a material breach, the non-breaching party may terminate this agreement for cause by giving sixty (60) days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.
- F. Termination: Notwithstanding the previously stated breaching provision, the SPONSOR may terminate this contract for breach/neglect as determined by the SPONSOR with written notification to the CONTRACTOR, in regard to such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by the contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to the SPONSOR.

The CONTRACTOR and the SPONSOR may each terminate this agreement without cause by providing ninety (90) days written notice to the other party of its intent to terminate.

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

- G. Intent Not to Renew: The CONTRACTOR shall provide one hundred-twenty (120) days written notice to the SPONSOR of any intent not to renew the contract.
- H. Performance Security (not applicable): At the discretion of the SPONSOR, the SPONSOR may retain all or a part of the Performance Security stipulated in Section XVI, as a result of such nonperformance.
- I. Contract Amendments: Any agreements shall remain in effect throughout its term unless the parties mutually agree, in a written document signed by both parties and attached to the agreement, to amend, add or delete any article or exhibit. Any amendment to the agreement shall become effective at the time specified in the amendment. Comments from the CONTRACTOR to the SPONSOR will go through the SPONSOR's Contract Administrator. If a SPONSOR needs to modify their contract, they must work with the state to determine if it is an allowable change and provide assurance that it does not create a material change. Company written addendums are not allowed. Any amendment, addendum, and/or renewal to the contract must be approved by KSDE prior to the time specified in the written document.
- J. Responsible Authority: The SPONSOR is the responsible authority without recourse to USDA Food and Nutrition Service or to KSDE for the settlement and satisfaction of all contractual and administrative issues arising from the contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violations of the law will be referred to the local, State, or Federal authority that has proper jurisdiction.
- K. Limitations of Financial Commitment: The SPONSOR's financial commitments contained in the agreement are subject to annual appropriation by the SPONSOR's School Board.

- L. Catastrophe: With the exception of payment obligations for prior performance under this agreement, neither the CONTRACTOR nor the SPONSOR shall be liable for the failure to perform their respective obligations under this agreement when such failure is caused by fire, explosion, water, acts of God (except emergency closing days as stated in the SPONSOR policy, which is attached as Exhibit I), civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, governmental rules or regulations, or like causes that are beyond the reasonable control of such party.

## **XVIII. Agreement to Manage a School Food Service Program**

- A. Addendum to RFP/Negotiated Terms, if applicable and subject to KSDE approval.

In addition to the RFP and proposal submitted by the Contractor, the following terms have been negotiated between the Sponsor and Contractor and do not constitute a material change.

1. The <select one> agrees to .
2. The <select one> agrees to .

- B. This contract constitutes the entire agreement between the SPONSOR and the CONTRACTOR and may not be changed, extended orally, or altered by cause of conduct.

- C. Contractual Provisions

State of Kansas  
Department of Administration  
DA-146a (Rev. 06-12)

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/Sponsor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. Terms Herein Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. Kansas Law and Venue: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.



3. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to Sponsor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Sponsor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the Sponsor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to Sponsor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the Sponsor.
4. Disclaimer Of Liability: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any Sponsor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. Anti-Discrimination Clause: The Sponsor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Sponsor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the Sponsor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Sponsor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a Sponsor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. Acceptance Of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. Representative's Authority To Contract: By signing this contract, the representative of the Sponsor thereby represents that such person is duly authorized by the Sponsor to execute this contract on behalf of the Sponsor and that the Sponsor agrees to be bound by the provisions thereof.
9. Responsibility For Taxes: The State of Kansas and its agencies shall not be responsible for, nor indemnify a Sponsor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. Insurance: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the Sponsor shall bear the risk of any loss or damage to any property in which the Sponsor holds title.
11. Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. The Eleventh Amendment: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. Campaign Contributions / Lobbying: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

D. Agreement

The SPONSOR's Request for Proposal (RFP), including all of its exhibits and the CONTRACTOR's Proposal are hereby in all respects made a part of the agreement between the Sponsor and Contractor.

THIS AGREEMENT, made this 13 day of April by and between the governing board of Ness City – USD 303 hereinafter referred to as the SPONSOR and \_\_\_\_\_ hereinafter referred to as the CONTRACTOR.

WHEREAS, the CONTRACTOR submitted a proposal dated \_\_\_\_\_ to the SPONSOR to provide food service management to the SPONSOR and has been awarded a contract by the SPONSOR, contingent upon the execution of an agreement that is acceptable to both parties.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter expressed, it is mutually covenanted and agreed by and between the parties hereto as indicated in this Request for Proposal, all exhibits and the Proposal as submitted by the Contractor.

E. Scope and Purpose

1. This agreement shall be construed under the laws of the State of Kansas. Any action or proceeding arising out of this agreement shall be brought in the appropriate courts of the State of Kansas.
2. This agreement may be executed in several counterparts, each of which shall be deemed an original.
3. A waiver of any failure under this agreement shall neither be construed as nor constitute a waiver of any subsequent failure. This agreement supersedes all prior negotiations, representations or agreements, if any. The section headings are used solely for convenience and shall not be deemed to limit the subject of the sections and paragraphs or be considered in their interpretation.
4. If any provision is unenforceable or invalid for any reason, the remainder of this agreement shall continue in effect.
5. Payments of any expense or fee shall not preclude the SPONSOR from making a claim for adjustment on any item that is found not to have been in accordance with the provisions of this agreement and proposal specifications.
6. Any notice or communication required or permitted under this agreement shall be in writing and shall be served personally or sent by United States registered or certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To SPONSOR: Derek Reinhardt 414 East Chestnut Ness City, KS 67560

To CONTRACTOR: \_\_\_\_\_

with copy to: Kansas State Department of Education Child Nutrition & Wellness

and/or to such other persons or places as either of the parties may hereafter designate in writing. All such notices shall be deemed effective when received, but no later than forty-eight (48) hours after the same are deposited in the United States mail.

F. Fee Payment

The agreement is based on a **Fixed-Price Contract** wherein the CONTRACTOR will be paid a set price per meal served and the CONTRACTOR will be responsible for the costs incurred to operate the SPONSOR'S food service program.

The SPONSOR shall make payment to the CONTRACTOR within <select one> days after the submission of a valid bill for each period of program operation.

The fee per meal and meal equivalent is specified in the RFP, Exhibit N, Food Service Management Company Fee Proposal and as described below:

Meal Type	Fee Per Meal
1. Student Lunches	\$
2. Student Breakfasts	\$
3. Student ASP Snacks	\$
4. CACFP At-Risk Snacks	\$
5. CACFP At-Risk Meals	\$
6. SFSP Breakfast	\$
7. SFSP Lunch/Supper Meals	\$
8. SFSP Snacks	\$
9. SMP Milk	\$
10. FFVP Meal Equivalent Fee	\$
11. Meal Equivalent Fee (Non-Reimbursable Sales: a la carte, ineligible student meals, extra milk, paid adult meals, gratis adult meals, catering, etc)	\$
12. Meal Equivalent Factor	\$3.3275

G. Signatures

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first written above.

SPONSOR:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Meal Pattern	Breakfast Meal Pattern			Lunch Meal Pattern		
	Grades K-5 <sup>a</sup>	Grades 6-8 <sup>a</sup>	Grades 9-12 <sup>a</sup>	Grades K-5	Grades 6-8	Grades 9-12
	Amount of Food <sup>b</sup> Per Week (Minimum Per Day)					
Fruits (cups) <sup>c,d</sup>	5 (1) <sup>e</sup>	5 (1) <sup>e</sup>	5 (1) <sup>e</sup>	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) <sup>c,d</sup>	0	0	0	3¾ (¾)	3¾ (¾)	5 (1)
Dark green <sup>f</sup>	0	0	0	½	½	½
Red/Orange <sup>f</sup>	0	0	0	¾	¾	1¼
Beans/Peas (Legumes) <sup>f</sup>	0	0	0	½	½	½
Starchy <sup>f</sup>	0	0	0	½	½	½
Other <sup>f,g</sup>	0	0	0	½	½	¾
Additional Veg to Reach Total <sup>h</sup>	0	0	0	1	1	1½
Grains (oz eq) <sup>i</sup>	7-10 (1) <sup>j</sup>	8-10 (1) <sup>j</sup>	9-10 (1) <sup>j</sup>	8-9 (1)	8-10 (1)	10-12 (2)
Meats/Meat Alternates (oz eq)	0 <sup>k</sup>	0 <sup>k</sup>	0 <sup>k</sup>	8-10 (1)	9-10 (1)	10-12 (2)
Fluid milk (cups) <sup>l</sup>	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
<b>Other Specifications: Daily Amount Based on the Average for a 5-Day Week</b>						
Min-max calories (kcal) <sup>m,n,o</sup>	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat (% of total calories) <sup>n,o</sup>	< 10	< 10	< 10	< 10	< 10	< 10
Sodium (mg) <sup>n,p</sup>	≤ 430	≤ 470	≤ 500	≤ 640	≤ 710	≤ 740
Trans fat <sup>n,o</sup>	Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving.					

**New Sodium Standard K-12 – Target I: SY 2014-2015**

Intermediate Sodium (mg)	≤ 540	≤ 600	≤ 640	≤ 1230	≤ 1360	≤ 1420
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**New Sodium Standard K-12 – Target I: SY 2017-2018**

Intermediate Sodium (mg)	≤ 485	≤ 535	≤ 570	≤ 935	≤ 1035	≤ 1080
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**New Sodium Standard K-12 – Target I: SY 2022-2023**

Final Sodium (mg)	≤ 430	≤ 470	≤ 500	≤ 640	≤ 710	≤ 740
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<sup>a</sup>In the SBP, the above age-grade groups are required beginning July 1, 2013 (SY 2013-14). In SY 2012-2013 only, schools may continue to use the meal pattern for grades K-12 (see § 220.23).

<sup>b</sup>Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.

<sup>c</sup>One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

<sup>d</sup>For breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or “Other vegetables” subgroups as defined in §210.10(c)(2)(iii).

<sup>e</sup>The fruit quantity requirement for the SBP (5 cups/week and a minimum of 1 cup/day) is effective July 1, 2014 (SY 2014-2015).

<sup>f</sup>Larger amounts of these vegetables may be served.

<sup>g</sup>This category consists of “Other vegetables” as defined in §210.10(c)(2)(iii)(E). For the purposes of the NSLP, “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in §210.10(c)(2)(iii).

<sup>h</sup>Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

<sup>i</sup>At least half of the grains offered must be whole grain-rich in the NSLP beginning July 1, 2012 (SY 2012-2013), and in the SBP beginning July 1, 2013 (SY 2013-2014). All grains must be whole grain-rich in both the NSLP and the SBP beginning July 1, 2014 (SY 2014-15).

<sup>j</sup>In the SBP, the grain ranges must be offered beginning July 1, 2013 (SY 2013-2014).

<sup>k</sup>There is no separate meat/meat alternate component in the SBP. Beginning July 1, 2013 (SY 2013-2014), schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

<sup>l</sup>Fluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).

<sup>m</sup>The average daily amount of calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

<sup>n</sup>Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

<sup>o</sup>In the SBP, calories and trans fat specifications take effect beginning July 1, 2013 (SY 2013-2014).

<sup>p</sup>Final sodium specifications are to be reached by SY 2022-2023 or July 1, 2022. Intermediate sodium specifications are established for SY 2014-2015 and 2017-2018. See required intermediate specifications in § 210.10(f)(3) for lunches and § 220.8(f)(3) for breakfast

Jan. 2012

**Implementation Timeline for Final Rule****“Nutrition Standards in the National School Lunch and School Breakfast Programs”**

Implementation of most meal requirements in the NSLP begins SY 2012-2013. In the SBP, the meal requirements (other than milk) will be implemented gradually beginning SY 2013-2014.

NEW REQUIREMENTS	Implementation (School Year)for NSLP (L) and SBP (B)						
	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2022/23
<b>FRUITS COMPONENT</b>							
• Offer fruit daily	L						
• Fruit quantity increase to 5 cups/week (minimum 1 cup/day)			B				
<b>VEGETABLES COMPONENT</b>							
• Offer vegetables subgroups weekly	L						
<b>GRAINS COMPONENT</b>							
• Half of grains must be whole grain-rich	L	B					
• All grains must be whole-grain rich			L, B				
• Offer weekly grains ranges	L	B					
<b>MEATS/MEAT ALTERNATES COMPONENT</b>							
• Offer weekly meats/meat alternates ranges (daily min.)	L						
<b>MILK COMPONENT</b>							
• Offer only fat-free (unflavored or flavored) and low-fat (unflavored) milk	L, B						
<b>DIETARY SPECIFICATIONS (to be met on average over a week)</b>							
• Calorie ranges	L	B					
• Saturated fat limit (no change)	L, B						
• Sodium Targets <ul style="list-style-type: none"> <li>○ Target 1</li> <li>○ Target 2</li> <li>○ Final target</li> </ul>			L, B			L, B	L, B
• Zero grams of <u>trans</u> fat per portion	L	B					
<b>MENU PLANNING</b>							
• A single FBMP approach	L	B					
<b>AGE-GRADE GROUPS</b>							
• Establish age/grade groups: K-5, 6-8, and 9-12	L	B					
<b>OFFER VS. SERVE</b>							
• Reimbursable meals must contain a fruit or vegetable (1/2 cup minimum)	L		B				
<b>MONITORING</b>							
• 3-year adm. review cycle		L, B					
• Conduct weighted nutrient analysis on 1 week of menus	L	B					