COST + FEE

FOOD SERVICE MANAGEMENT COMPANY (FSMC) REQUEST FOR PROPOSAL AND CONTRACT

Local Education Agency Name (LEA): Name

Agreement No.: #

Send Sealed Proposal to:

LEA Contact Person

Street Address

City, State, Zip

Contact Phone #

All proposals must be received by:

Time

Date

To be filled in after contract awarded by LEA.

FSMC Awarded: FSMC Name

LOCAL EDUCATION AGENCY (LEA) INFORMATION – (LEA COMPLETE PAGES 1-8)

This solicitation is for the purpose of entering into a contract for the operation of a food service program between the school/district hereinafter referred to as the Local Education Agency (LEA) and the Food Service Management Company (FSMC).

Each bidder must submit a complete response to this solicitation ***using the forms provided.*** No other documents submitted with the Request for Proposal (RFP)/contract will affect the contract provisions, and ***there may be no modifications to the RFP/contract language.***

1. Interested bidders must meet to review the specifications, to clarify any questions, and for a walk-through of the facilities with school officials on _____date_____ , _____time_____ at the_____location_____, _____ (attendance is required).

2. Sealed proposals are to be submitted to:

LEA	_____
Address	_____
City, State, Zip	_____

3. Public opening will be on _____date_____ , _____time_____ at the_____location_____ . Proposals will not be accepted after this time. The proposal is to be submitted in a sealed envelope marked *Food Service Management Proposal.*

4. This contract shall become effective _____date_____ and terminate on June 30, **2016**. The effective date may be different from July 1, but the termination date must be June 30. The effective date may not occur prior to the date on which the contract is signed.

5. The FSMC shall conduct the food service in such a manner as will ensure compliance with the rules and regulations of the Missouri Department of Elementary and Secondary Education, School Food Services Section, hereinafter referred to as the State Agency (SA) and the United States Department of Agriculture (USDA) regarding Child Nutrition Programs.

   Check only the programs the LEA operates. If a program is added later (i.e., a breakfast program), the appropriate procurement procedures must be followed.

   - ☐ National School Lunch Program (NSLP) (Regular Term)
   - ☐ NSLP (Summer Term)
   - ☐ School Breakfast Program (SBP) (Regular Term
   - ☐ SBP (Summer Term)
   - ☐ After-School Snack Program (ASSP)
   - ☐ Special Milk Program (SMP)
   - ☐ A la Carte
   - ☐ Adult Meals
   - ☐ Outside Catered Events
   - ☐ Fresh Fruit and Vegetable Program (FFVP)

6. The contract charge for meal service is based on an estimated minimum number of ____#____ full serving days.

7. The LEA will ☐ will not ☐ require the FSMC to perform a security (background) check on any FSMC employee.

8. The LEA must designate if current LEA employees, including site and area managers as well as any other staff, will be retained by the LEA or be subject to employment by the FSMC.

   Employees retain by: ☐ LEA ☐ FSMC ☐ Both LEA and FSMC

9. ☐ LEA ☐ FSMC shall be responsible for any costs for the storage and delivery of federally donated foods used by the food service program.

10. ☐ LEA ☐ FSMC shall be responsible for any costs resulting from the processing of federally donated foods.

11. Type of food service preparation: ☐ On-site preparation ☐ Vended

LOCAL EDUCATION AGENCY INFORMATION CONTINUTED

12. The LEA shall provide the FSMC with a schedule of employees, positions, assigned locations, salaries, and hours to be worked on the Labor Worksheet (Page 6).

13. The LEA authorizes the FSMC to exclusively manage and operate on its behalf the school cafeterias, kitchens, snack bars, and related food facilities located within the premises of all LEA schools specified on LEA/Site Building Listing-General Data (Page 8).

14. Attach the LEA's calendar for the current school year.

15. Attach participation information for lunch and/or breakfast and/or ala carte receipts from August through November of the prior school year broken down by each school.

16. Attach a sample 21-day cycle lunch, breakfast, and after school snack menu prepared by the LEA. This menu must be used for the first 21-day cycle of the new school year.

If additional information is required, please contact Contact Person at Phone # or email.

The LEA must obtain written approval of the RFP by the SA before issuance.

RFP/Contract Additional Provisions

Additional requests made by the LEA are to be included on this page. LEA additional RFP/contract provisions must be reviewed and approved by the State Agency.

Division of Responsibilities for Food Service Program

Mark with an "X" those that will be the responsibility of the FSMC, the LEA, both LEA and FSMC or Not Applicable (NA).

COSTS	FSMC	LEA	NA
Food Cost (food, condiments, beverages)			
Food Purchasing	☐	☐	☐
Processing of Invoices	☐	☐	☐
Payment of Invoices	☐	☐	☐
Donated Food Inventory Control	☐	☐	☐
Storage/Delivery Charges of Donated Foods	☐	☐	☐
Inter-LEA Delivery of Donated Foods	☐	☐	☐
Labor Cost			
Payment of Managers, and/or Supervisors:	☐	☐	☐
Payment of Hourly Wage Employees	☐	☐	☐
Payroll Taxes of all Employees	☐	☐	☐
Preparation of all Employee Payroll	☐	☐	☐
Processing of all Employee Payroll	☐	☐	☐
FICA	☐	☐	☐
Retirement for Contractor's employees	☐	☐	☐
Unemployment Insurance for Contractor's employees	☐	☐	☐
Workers' Compensation for Contractor's employees	☐	☐	☐
Health Insurance for Contractor's employees	☐	☐	☐
Life Insurance and Disability for Contractor's employees	☐	☐	☐
Holidays for Contractor's employees	☐	☐	☐
Labor Charges for Supervision of Outside Groups using Facilities	☐	☐	☐
Student Labor (IF Any)	☐	☐	☐
Other Purchased Services			
Telephone, local service	☐	☐	☐
Telephone, long distance	☐	☐	☐
Utilities (heat, power, water)	☐	☐	☐
Extermination	☐	☐	☐
Laundry	☐	☐	☐
Removal of Trash and Garbage from Kitchen	☐	☐	☐
Removal of Trash and Garbage from Premises	☐	☐	☐
Other	☐	☐	☐
Supplies			
Disposable Service ware	☐	☐	☐
Cleaning Supplies	☐	☐	☐
Paper Supplies	☐	☐	☐
Uniforms	☐	☐	☐
Menu Paper	☐	☐	☐
Menu Printing	☐	☐	☐
Promotional Materials	☐	☐	☐
Nutrition Education and Materials	☐	☐	☐
Office Supplies	☐	☐	☐
Postage	☐	☐	☐
Equipment and Facilities			
Replacement of Capital/Major Equipment	☐	☐	☐
Replacement of Expendable/Minor Equipment	☐	☐	☐
Repair of Equipment (Normal wear and tear)	☐	☐	☐
Routine Cleaning of Cafeteria Walls and Floors	☐	☐	☐
Routine Cleaning of Kitchen Walls and Floors	☐	☐	☐
Periodic Waxing and Buffing of Floors	☐	☐	☐
Sanitation and Proper Use of Equipment	☐	☐	☐
Daily Cleaning of Cafeteria Tables and Chairs	☐	☐	☐

Division of Responsibilities for Food Service Program

Capital Improvement	FSMC	LEA	NA
Building Structural Changes	☐	☐	☐
Painting	☐	☐	☐
Other			
NSLP Application Agreement Forms	☐	☐	☐
NSLP Free/Reduced Application Distribution	☐	☐	☐
NSLP Free/Reduced Application Approval	☐	☐	☐
NSLP Free/Reduced Application Verification	☐	☐	☐
Records Supporting Reimbursement Claims	☐	☐	☐
Claims for Federal & State Reimbursement	☐	☐	☐
Point-of-Sale Accountability	☐	☐	☐
Receipt of Federal & State Reimbursement	☐	☐	☐
Pricing of NSLP Meals	☐	☐	☐
Collection and deposit of Daily Cash Receipts	☐	☐	☐
Menu Development	☐	☐	☐
Menu Distribution	☐	☐	☐
Pricing of A la Carte Offerings	☐	☐	☐
Inter-LEA Deliver to Satellite Areas	☐	☐	☐
Vehicle Lease of Purchase	☐	☐	☐
Vehicle Maintenance	☐	☐	☐
Vehicle Fuel and Oil	☐	☐	☐
Vehicle Taxes	☐	☐	☐
Vehicle Insurance	☐	☐	☐
Vehicle Licenses	☐	☐	☐
Vehicle Registration	☐	☐	☐
Depreciation	☐	☐	☐
Audit fees	☐	☐	☐
Licenses/Permits	☐	☐	☐
Promotions	☐	☐	☐
Mileage	☐	☐	☐
Employee Physicals	☐	☐	☐
Sales Tax	☐	☐	☐
Performance Bond (if applicable)	☐	☐	☐
Liability Insurance	☐	☐	☐
Miscellaneous	☐	☐	☐

LABOR WORKSHEET

To be completed by the LEA for LEA employees pay rates for the school year .

Site or School	Employee Name (Optional)	Job Title	Hourly Rate ($)	Daily Hours	Number of Days Paid	Total Annual Wage ($)
TOTAL LABOR						$ 0
Retirement						$
Substitute Pay						$

LEA SITE/BUILDING LISTING – GENERAL DATA

School	Address	Grade Levels	Enrollment	Type of Meal Service (vended or on-site prep)	No. of serving periods	Beginning and Ending Times of Meal Service			No. of Serving Days
						Breakfast	Lunch	Snack	

Evaluation and Award Process

After determining that a bid satisfies the mandatory requirements stated in the RFP, the LEA shall use both objective analysis and subjective judgment in conducting a comparative assessment of the bid. The LEA must choose one of the following ways to evaluate the bids and must state in the RFP/contract how they plan to evaluate the bids.

A. ☐

Price/Cost	50%
Experience, Reliability and Expertise	25%
Method of Performance	25%

OR

B. ☐

Weight	**Criteria**
points	Price/Cost
points	Service Capability Plan
points	Experience, References
points	Financial, Condition/Stability, Business Practices
points	Accounting and Reporting Systems
points	Personnel Management
points	Innovation
points	Promotion of the School Food Service Program
points	Involvement of Students, Staff, and Patrons
0 **Total**	**(Must equal 100)**

While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method.

In addition, after the initial screening process and review of references, a question and answer interview may be conducted with the FSMC. The FSMC may also be asked to make an oral presentation of their proposal as submitted with no modifications made to the RFP/contract language.

The LEA's officers, employees, board members, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors. To the extent permissible under state law, rules, or regulations, such standards shall be provided for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

FSMC INFORMATION – (FSMC COMPLETE PAGES 9- 15)

Cost + Fee Financial Agreements

The financial arrangements between the LEA and FSMC for the management of the school food services are as follows:

FSMC COMPLETE THE BELOW INFORMATION	
The cost to the LEA per meal served during the 2015-2016 school year for the administrative fee will be:	**$**
The cost to the LEA per meal served during the 2015-2016 school year for the management fee will be:	**$**
The meal equivalent factor for the 2015-2016 school year will be:	**$**

The administrative fee, management fee, and meal equivalency will be subject to the percent change in the Consumer Price Index for all Urban Consumers from May of the previous year to May of the current year, made at the time of contract renewal. The specific CPI used will be published in Federal Register Notice, Department of Agriculture, Food and Nutrition Service, National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates.

1. The said invoices submitted shall be payable monthly by the LEA. Finance and handling charge of ___%___ per month will be charged on any amount remaining unpaid after thirty days (30).

2. The solicitation and any resulting contract shall be governed in all respects by the laws of the State of Missouri. The contractor shall comply with applicable federal, state, and local laws and regulations. Any claim or action arising under this agreement/contract shall have a venue in _____County_____ County, Missouri.

3. The FSMC shall provide the LEA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked on the Labor Worksheet (Page 10).

Description and History of FSMC

Each FSMC shall furnish as part of their proposal a complete general description of experience in the field of school food service operations. Please include the following:

1. Name and address of FSMC.

2. The duration and extent of experience in the operation of school food services.

3. A list of similar operations and locations where FSMC is operating or has operated school food services. Give length of time, name, address, and telephone number of contact person of each operation.

4. A summary of the FSMC's experience during the past 3 years of successfully operating a school food service program requiring nutritious meals that comply with applicable regulations.

5. A table of FSMC organization and a plan for the administrative management, supervision, and staffing proposed under the specifications of this contract.

LABOR WORKSHEET

To be completed by the FSMC for FSMC employees pay rates for the school year .

SITE OR SCHOOL	EMPLOYEE	JOB TITLE	HOURLY RATE ($)	DAILY HOURS	NUMBER OF DAYS PAID	TOTAL ANNUAL WAGE ($)
TOTAL LABOR						$ 0
Retirement						$
Substitute Pay						$

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts, Exceeding $100,000 in Federal Funds.

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

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

_____

Name/Address of Organization

_____

Name/Title of Submitting Official

Signature _____ Date _____

DISCLOSURE OF LOBBYING ACTIVITIES
APPROVED BY OMB
COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

(SEE NEXT PAGE FOR PUBLIC BURDEN DISCLOSURE)

1. Type of Federal Action: ☐ a. Contract b. Grant c. Cooperative Agreement d. Loan e. Loan Guarantee f. Loan Insurance	**2. Status of Federal Action:** ☐ a. Bid/Offer/Application b. Initial Award c. Postaward	**3. Report Type:** ☐ a. Initial Filing b. Material Change For Material Change Only: Year_____ Quarter_____ Date of Last Report_____

4. Name and Address of Reporting Entity: Prime ☐ ☐ Subawardee Tier _____, if known: Congressional District, if known:	**5. If Reporting Entity in No. 4 Is Subawardee, Enter Name and Address of Prime:** Congressional District, if known:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, if applicable: _____
8. Federal Action Number: ***(if known)***	**9. Award Amount:** ***(if known)*** $_____
10. a. Name and Address of Lobbying Entity: ***(if individual, last name, first name, MI)***	**b. Individual Performing Services:** ***(including address if different from No. 10a.) (last name, first name, MI)***
11. Amount of Payment: ***(check all that apply)*** $ _____ Actual ☐ Planned ☐	**13. Type of Payment:** ***(check all that apply)*** ☐ a. Retainer ☐ b. One-Time Fee ☐ c. Commission ☐ d. Contingency Fee ☐ e. Deferred ☐ f. Other: (specify) _____
12. Form of Payment: ***(check all that apply)*** a. Cash Nature _____ b. In-kind (specify) Value _____	

14. Brief Description of services performed or to be preformed and date(s) of services, including officer(s), employee(s), or member(s) contracted for payment indicated in Item 11:

(Attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheets Attached: Yes ☐ No ☐

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which evidence was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosures shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone Number:** _____ **Date:** _____
Federal Use Only:	**Authorized for Local Reproduction**

(SEE NEXT PAGE FOR PUBLIC BURDEN DISCLOUSURE)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1(e.g., Request for Proposal (RFP) number; grant announcement number; the contract, grant or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001"

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

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

SF-LLL-A (Continuation Sheet)

RFP/Contract Additional Provisions

Additional requests made by the FSMC are to be included on this page. FSMC additional RFP/contract provisions must be reviewed and approved by the SA.

General Information – Terms and Conditions to be Included in RFP\Contract (Pages 16-28)

The LEA wishes to retain the FSMC to provide certain food and food related services at the sites specified by the LEA.

The contract is acknowledged by the LEA and FSMC to be satisfactory and adequate. Both parties agree as follows:

1. The food service program provided shall be operated and maintained as a benefit to the LEA students, faculty, and staff.

2. The FSMC must give evidence of financial stability.

3. The FSMC must be licensed to do business in the State of Missouri.

4. Award shall be made to the qualified and responsible offer whose proposal is responsive to this solicitation. A responsible offer is one who's financial, technical, and other resources indicate an ability to perform the services required by this solicitation.

5. 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.

6. The LEA is not liable for any cost incurred by the FSMC prior to the signing of a contract by all parties. **Paying the FSMC from the Child Nutrition Program funds is prohibited until the contract is approved by the SA, and signed by both parties.**

7. Provisions for equipment purchases that entail repayment to the FSMC over a period in excess of one year are not permitted.

8. No oral interpretation will be made to any FSMC as to the meaning of the RFP. Any oral communication will be considered unofficial and non-binding on the LEA. Unauthorized contact by the FSMC with other LEA employees or LEA Board Member regarding the RFP may result in disqualification. Each request for such interpretation shall be made in writing to the LEA. Every interpretation made to the FSMC will be in the form of an addendum to the specification, mailed to each FSMC, and will be on file at the school. All such addenda shall become part of the final contract and FSMC shall be bound by such addenda.

9. In the event the contract initially awarded by the LEA is terminated for any reason within 120 days of the due date for proposals, the LEA reserves the right to accept any other submitted proposal in conformance to the requirements of this solicitation including submission by the original date by which such proposals where due.

Intent

1. The FSMC shall conduct the food service in such a manner as will ensure compliance with the rules and regulations of the SA and the USDA regarding Child Nutrition Programs.

2. The LEA is prohibited from entering into contracts that are on a "cost-plus-a-percentage of cost" or "cost-plus-a-percentage-of-income" basis.

3. If the LEA determines that significant changes are necessary, the LEA must rebid the contract. The following changes would normally not substantially change the contract.

   Number of schools - new schools added;

   Changes in enrollment - decreased and increased in student enrollment and the corresponding change expected in participation;

   Changes in meal prices charged to students by LEA - meal price changes (determined by the LEA);

   Cost increases - cost increases limited to a measurable index (such as the Consumer Price Index for all Urban Consumers); and

Meal equivalency - minor adjustments to the per meal equivalency.

4. Examples of substantive changes which could require the LEA to rebid the contract include; the addition of a program, such as the SBP; major changes to the formula for determining meal equivalency; a major shift in responsibilities for the LEA/FSMC staff; and significant changes in the basis for determining guaranteed returns.

5. The FSMC shall cooperate with the LEA in promoting nutrition education and coordinating the LEA's food service with classroom instructions.

6. The LEA reserves the right to maintain present food and beverage vending machines in its facilities.

7. The FSMC will be required to use the LEA's point of sale software. Information regarding the software will be available at the pre-bid conference.

8. The FSMC shall be an independent contractor and not an employee of the LEA. The employees of the FSMC shall not be employees of the LEA.

9. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc, as requested by the LEA. The LEA or requesting organization will be billed for the actual cost of food, supplies, labor, and the FSMC's overhead and administrative expense if applicable to providing such service. USDA donated foods shall not be used for these special functions.

10. This contract constitutes the entire agreement between the LEA and the FSMC and may not be changed, extended orally, or altered by cause of conduct.

11. No provision of this contract shall be assigned or subcontracted without prior written consent of the LEA.

12. Any agreement between the LEA and the FSMC shall be subject to approval by the SA.

Duration and Termination

1. This contract shall be for duration of no longer than one year; and options for the yearly renewal of a contract may not exceed four (4) additional years. (7 CFR 210.16(d))

2. Either party may cancel for cause with 60 day notification. (7CFR 210.16(d))

3. Any amendment, addendum, and/or renewal to the contract shall become effective at the time specified and must be sent to the SA.

4. Neither the FSMC nor the LEA shall be responsible for any losses resulting if the fulfillment of the terms of the contract is delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or any other acts which could not have been prevented by the exercise of due diligence.

5. Ensure that the SA has reviewed and approved contract terms and that the LEA has incorporated all SA required changes into the contract or amendment before any contract or amendment to an existing FSMC contract is executed. Any changes made by the LEA or FSMC to a SA pre-approved prototype contract or SA approved contract term must be approved in writing by the SA before the contract is executed. When requested, the LEA must submit all procurement documents, including responses submitted by potential contractors, to the SA, by the due date established by the SA.
(7 CFR 210.16(a)(10))

Cost + Fee Financial Agreements

1. All administrative/management fees shall be specifically stated in this contract. Such fees may be calculated on cents per meal or flat fee basis. The FSMC will operate, administer, and manage the food service for the LEA in accordance with the financial arrangements as set forth in this section.

2. All program expenses not otherwise defined in the contract will be assumed to be covered by the FSMC under the administrative fee. All indirect and overhead costs must be included in the administrative fee.

3. The following must be included in the administrative fees and may not be charged in any other expenses. Any travel relating to the following must be covered by the administrative fee.

- Personnel and labor relation services and visitation
- Legal department services
- Purchasing and quality control
- Technical research
- Cost incurred in hiring and relocating FSMC management personnel
- Dietetic services (administrative and nutritional)
- Test kitchens
- Accounting and accounting procedures
- Tax administration
- Technical supervision
- Supervisor personnel and regular inspections or audit personnel
- Teaching and training programs
- General regional support
- General national headquarters support
- Design services
- Menu development
- Information technology and support
- Payroll documentation and administrative cost
- Sanitation
- Personnel advice

4. The following definitions are provided to clarify allowable direct costs:

   a. **Food** is defined as and limited to those items purchased for use in the preparation and service of student, adult, catered and a la carte meals as specified under terms and conditions this includes the cost of donated foods handling and warehousing charges.

   b. **Labor** is defined as and limited to on-site employees responsible for the management, preparation, service, and clean up of meals.

   c. **Contracted Services** are costs incurred to pay for a service provided by another company. Typical cost would be laundry services, pest control, and periodic maintenance services. Those cost normally recognized as a part of the FSMC administrative cost cannot be separately contracted for and charged to the LEA account.

   d. **Transportation Cost** is cost incurred in operating a food service delivery vehicle. These would include gas, oil, tune-ups, and minor repairs. Cost of the purchase of the vehicle would be a capital expense.

   e. **Non food Expenses** are defined as paper supplies (including decorations), equipment rental, cleaning materials, travel as required for effective program management, uniforms, printing, taxes and licenses, insurance, and as contractually obligated herein. Products embossed with the FSMC logo are not to be considered allowable direct cost items.

5. Total meals are calculated by adding reimbursable meals, non-reimbursable and meal equivalents. The per meal management fee will be multiplied by total meals. The per meal administrative fee will be multiplied by total meals.

6. Goods purchased become the property of the LEA, should not be company specific, and must be used solely to benefit the LEA. Reimbursement for cost of goods will be the actual purchases as documented by invoices less all discounts and rebates taken by the company. Where rebates are not made directly to the FSMC without designation to specific FSMC accounts, the FSMC will prorate the discount and credit the LEA.

7. The LEA shall ensure that the FSMC fully discloses all discounts, rebates, allowances, and incentives received by the FSMC from its suppliers. If the FSMC receives a discount, rebate, allowance, or incentive from any supplier, the FSMC must disclose and return to the LEA the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the LEA. All discounts, rebates, allowances, and incentives must be returned to the LEA during a mutually agreed upon timeframe that is beneficial to the LEA.

8. All procurement for goods and services related to this contract shall conform to federal procurement standards which provide for maximum open and free competition (7 CFR Part 3016 for public schools and 7 CFR Part 3019 for non-public schools). The FSMC shall maintain documentation of compliance with these standards.

9. The FSMC shall submit an invoice to the LEA weekly based upon the actual number of meals served during that calendar week, or monthly based upon the actual number of meals served during the calendar month multiplied by the daily rates for the total billing.

10. The LEA's failure to pay as invoiced shall constitute a breach of the contract. In the event any invoice is unpaid for more than 45 days, the FSMC shall have the right upon ten (10) days written notice to terminate performance under this contract. The LEA further agrees to pay all costs of collection of amounts due including a reasonable attorney's fee. Waiver by FSMC of the right to terminate for one or more late payments shall not constitute waiver of FSMC's rights for future late payments.

Food Service Management Company Responsibilities

1. The FSMC shall comply with the rules, regulations, policies, and instructions of the SA and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Part 210, 220, 245, 250, 3016, 3017, 3018, and 3019.

2. The FSMC shall not sell or offer on the premises of any school, any food, or beverage item other than the prescribed meals except those a la carte items authorized by the LEA.

3. The FSMC shall serve, on such days and at such times as requested by the LEA:
    a. Lunches, breakfasts, and after school snack priced as a unit, which meet the requirements prescribed by USDA.
    b. Milk, served to all children.
    c. Other foods as may be agreed upon by the FSMC and the LEA.

4. The FSMC shall serve free and reduced-priced meals, after school snacks or free milk to those children designated by the LEA.

5. The FSMC is required to substitute food components of the meal pattern for students with disabilities in accordance with 7 CFR 15(b) when the disability restricts their diet and is permitted to make allowable substitutions for students without disabilities when they are unable to eat regular meals because of a medical or special dietary need. Substitutes are made on a case-by-case basis and must be supported by a statement of the need for substitutes that included recommended alternate foods, disabilities, and the statement must be signed by a medical doctor. For students without disabilities, a recognized medical authority must sign the statement.

6. The FSMC shall participate in the parent, teacher, and student advisory boards.

7. The FSMC shall implement the collection procedures as specified by the LEA.

8. The FSMC shall deposit daily all monies in the LEA account.

9. The FSMC shall prepare and maintain such records as the LEA will need to support its claim for reimbursement, and shall, at a minimum, report claim information to the LEA at the end of each calendar month. (7 CFR 210.16(c)(1))

10. The FSMC agrees to provide the LEA with necessary financial information, to include detailed breakouts of all income and expenditure categories for reporting to the SA.

11. The FSMC shall not use LEA facilities for preparation of food to be served at any location other than for the LEA's approved program without the permission of the LEA.

12. If food or meals are proposed to be prepared outside the school, the FSMC shall maintain State and local health certification of their facility, and shall maintain this health certification for the duration of the contract. (7CFR 210.16(c)(2))

13. If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of this contract, the FSMC shall assume responsibility for the amount denied.

LEA Responsibilities

1. The LEA shall ensure that FSMC operation of the LEA's school food service is in conformance with the LEA's agreement under the program. (7CFR 210.16(a)(2))

2. The LEA shall retain control of the quality, extent and general nature of its food service and the prices to be charged to the children for meals, milk, after school snack, a la carte items, adult meals, and vending machine items, as applicable. (7CFR 210.16(a)(4))

3. The LEA must receive all food service revenue, including rebate payments resulting from participation in the Rebate Program offered through the State of Missouri Commodity Processing Program for processed donated foods. The food service revenue shall flow through the LEA chart of accounts. The food service revenue shall be used only for the LEA nonprofit food service. (7CFR 210.14 (a))

4. The LEA shall monitor the food service program through periodic on-site reviews to include the inspection of meals, food preparation, storage and service areas, sanitation practices, and procedures for accurately counting and claiming meals. (7CFR 210.16 (a)(3))

5. The LEA shall retain the right to approve the menus and recipes for meals and other food to be served or sold to students to ensure compliance with the rules and regulations of the SA and the USDA.

6. The LEA shall approve all a la carte items and the prices charged for those items in advance of their sale by the FSMC.

7. The LEA shall ensure that an advisory board composed of parents, teachers, and students to assist in menu planning is established. (7CFR 210.16(a)(8)

8. The LEA shall retain signature authority on the SA-LEA agreement, free and reduced price policy statement and claims for reimbursement. (7CFR 210.16(a)(5))

9. The LEA has responsibility for developing, distributing, and collecting free and reduced price letter/application. (7CFR 245.10(a)) The LEA also has responsibility for determination of eligibility, conducting hearings, and for verification. (7CFR 245.6(a), 245.6(b), 245.7)

10. The LEA is responsible for participation in Direct Certification.

11. The LEA shall ensure applicable health certification(s) is maintained and that all State and local regulations are being met by FSMC preparing or serving meals at LEA's facilities. (7CFR 210.16(a)(7))

12. The LEA shall conduct annual reviews of storage facilities. The annual review shall include a physical inventory reconciled with the inventory records maintained by the LEA and FSMC. (7 CFR 250.14(e))

13. The LEA shall inform FSMC of any requested adjustments to menus and monitor implementation of said adjustments.

14. The LEA shall be responsible for resolution of program review and audit findings.

15. The LEA reserves the right to cancel or shorten any school day and agrees to give FSMC at least twenty-four (24) hours advance notice of such changes except in an emergency when as much advance notice as possible will be given.

Use of Facilities and Equipment

1. The LEA shall have access, with or without notice to the FSMC, to all the LEA's facilities used by the FSMC for purposes of inspection and audit.

2. The LEA shall make available without any cost or charge to the FSMC the areas and premises agreeable to both parties in which the FSMC shall render its services. The FSMC shall make no alterations, changes, or improvements to said areas without obtaining written consent from the LEA.

3. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with standards acceptable to the LEA and comply with all applicable laws, ordinances, rules, and regulations of federal, state, and local authorities.

4. The LEA shall provide at its expense necessary expendable equipment including, but not limited to, silverware, table service, chinaware, serving trays, glassware, pots, pans, and utensils; and shall periodically replace said expendable equipment as items become worn, broken, used, lost, or otherwise disposed of up to the amount of the original inventory, except for replacements caused by FSMC's negligence which shall be the responsibility of the FSMC.

5. The LEA shall provide and maintain at its expense necessary inter-school vehicles, satellite transporter units, and equipment including operating costs for it.

6. The FSMC shall take reasonable care in the use of the premises, equipment, vehicles, and other items furnished by LEA.

7. The FSMC and the LEA shall inventory the equipment and supplies owned by the LEA at the beginning of the school year, including but not limited to flatware, trays, chinaware, glassware, and kitchen utensils.

8. The FSMC shall maintain the inventory of expendable equipment necessary for the food service and at the inventory level as specified by the LEA.

9. The LEA shall furnish and install any equipment and make any structural changes needed to comply with federal, state, and local laws, ordinance, rules, and regulations.

10. The FSMC shall not remove food preparation and serving equipment owned by the LEA.

11. The LEA shall repair and service equipment except when damages result from the use of less-than-reasonable care by the employees of the FSMC.

12. The LEA shall not be legally responsible for loss or damage to equipment owned by the FSMC located on the LEA premises.

13. The FSMC shall provide a written notification to the LEA of any equipment belonging to the FSMC within ten days (10) of its placement on LEA premises.

14. The LEA reserves the right, at its sole discretion, to use its facilities to sell or dispense any food or beverage before or after the regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the Child Nutrition Programs.

15. The LEA shall return facilities and equipment to the FSMC in the same condition as received when the LEA uses the facilities for extra-curricular activities.

16. The LEA shall be responsible for removing rubbish and garbage resulting from food service operation after it has been placed by FSMC in containers furnished by the LEA for such purposes.

17. The LEA shall furnish at its expense, space, light, heat, power, hot and cold water, and other utilities as are necessary for the operation of the food services to be furnished hereunder.

18. The LEA shall not permit any interruptions in utility service except in an emergency or for necessary repairs or for improvement of the service, and in such case the LEA agrees to notify the FSMC immediately of any interruption or proposed interruption in utility service.

19. The LEA shall provide sanitary toilet facilities for the employees of the FSMC.

20. The LEA shall provide the FSMC with local telephone service.

21. The LEA must give prior approval and have final authority for the purchases of the equipment used for storage, preparation, or delivery of school meals.

22. The FSMC shall surrender to the LEA upon termination of the contract all equipment and furnishings belonging to the LEA in good repair and condition.

23. The LEA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and donated foods owned by the LEA.

24. The FSMC shall surrender to the LEA upon termination of the contract all records pertaining to the operation of the food service, to include all production records, product invoices, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order and complete to the extent necessary to reconstruct individual cost of prior FSMC billings.

Sanitation

1. The FSMC shall place garbage and trash in containers in designated areas as specified by the LEA.

2. The LEA shall remove all garbage and trash from the designated areas.

3. The FSMC shall clean the kitchen and dining room area.

4. The LEA shall clean ducts and hoods above the filter line.

5. The LEA shall provide extermination services as needed.

6. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

Employees

1. The FSMC shall be responsible for supervising and training personnel, including LEA-employed staff. Supervision activities include employee and labor relations personnel development, and hiring and termination of FSMC management staff, except for the site manager. The FSMC shall also be responsible for the hiring and termination of nonmanagement staff who are employees of the FSMC.

2. The LEA and FSMC 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 7 CFR, Section 3016.36 (i)(6).

3. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of LEA premises, as established by the LEA and furnished in writing to the FSMC.

4. The FSMC shall provide daily on-site supervisory personnel for the overall food service.

5. The FSMC shall provide worker's compensation coverage and unemployment insurance for its employees.

6. The FSMC shall maintain its own personnel and fringe benefit policies for its employees, subject to review by the LEA.

7. The FSMC shall not be responsible for hiring employees in excess of the number required for efficient operation.

8. All persons employed by the FSMC shall be employees of the FSMC and neither the FSMC nor any agent or employee of the FSMC shall be or be deemed an employee of the LEA. Party shall during the term of this contract or for one year thereafter solicit to hire, terminate, or contract with either party's employees who manage any services or any other employee or are highly compensated employees ("One-Year Non-Solicitation"). In the event of any breach of such One Year Non-Solicitation, the breaching party shall pay and the injured party shall accept an amount equal to the annual salary of the relevant employee as liquidated damages.

9. The LEA and FSMC 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.

10. The FSMC shall provide the LEA with a list of its personnel policies.

11. The LEA shall have final approval regarding the hiring of the FSMC's site manager.

12. The FSMC and LEA shall mutually agree upon staffing patterns.

13. The LEA and FSMC shall mutually agree upon the use of student workers.

14. The LEA may request in writing the removal of an employee of the FSMC who violates health requirements or conducts himself/herself in a manner of which is detrimental to the physical, mental, or moral well being of students or staff.

15. In the event of the removal or suspension of any employee, the FSMC shall immediately restructure its staff without disruption in service.

16. All food service personnel assigned to each school shall be instructed on the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.

USDA Donated Foods

1. The bid rate per meal must be calculated as if no donated foods are available.

2. The FSMC must credit the LEA for the value of all donated foods received for use in the LEA's meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, in accordance with the contingencies in 250.51(a).

3. The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with 250.54(b).

4. The LEA shall ensure that all federally donated foods are received by LEA and made available to the FSMC and shall accrue only to the benefit of the LEA's school food service and are utilized therein. (7 CFR 210.16(a)(6))

5. The FSMC shall accept and use USDA donated foods in as large a quantity as may be efficiently utilized in the nonprofit food service subject to approval of the LEA. (7 CFR 210.16(a)(6))

6. The FSMC will not itself enter into the processing agreement utilizing USDA donated foods on behalf of the LEA as required in subpart C of 7 CFR part 250.

7. The LEA and FSMC shall consult and agree on end products to be produced from USDA donated foods during the time of this contract. If agreement cannot be reached, the FSMC shall utilize the donated foods in the form that was furnished by USDA.

8. The FSMC must credit the LEA for the value of USDA donated foods received on the monthly billing statement.

9. The USDA donated food value used in crediting will be determined by using the USDA pound/unit value.

10. The FSMC will comply with the storage and inventory requirements for donated foods.

11. An end of school year reconciliation shall be conducted by the LEA to ensure and verify that the correct and proper credit has been received for the full value of all USDA donated foods received by the FSMC during the contract year. Including the value of donated foods contained in processed end products, in accordance with the contingencies in 250.51(a). The LEA reserves the right to conduct donated food credit audits throughout the year to ensure compliance with federal regulations. (7 CFR 210 and 7 CFR 250.)

12. The FSMC and LEA agree to comply with federal regulations 7 CFR Part 250, Section 250.12(b)(3) which states that LEAs have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling, and distribution. Section 250.12(b)(4) states that LEA will take action to obtain restitution in connection with claims for improper distribution, use, or loss, or damage to donated foods. (7CRF 250.12(b)(3) and (b)(4))

13. The FSMC must accept liability for any negligence on their part that results in any loss, damage, out of condition or improper use of donated foods, and shall credit the LEA the value of said donated foods, at the LEAs option, either monthly or through a end of school year reconciliation.

14. The LEA shall be legally responsible for any loss of federally donated food that may arise due to equipment malfunctions or loss of electrical power not within the control of the FSMC.

15. The FSMC shall have records maintained and available to substantiate the receipt, use, storage, and inventory compliance of USDA donated foods in accordance with 250.54(b). The FSMC must submit to the LEA monthly inventory reports showing all transactions for processed and non-processed donated foods.

16. The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the LEA's food service.

17. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the LEA's food service.

18. Extensions or renewal of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

19. The FSMC assures that the procurement of products on behalf of the LEA, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of the SA or the LEA processing agreements, and will ensure crediting of the LEA for the value of donated foods contained in such end products at the processing agreement value.

20. The SA, or LEA, the Comptroller General, the Department of Agriculture, or their duly authorized representative, may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods.

21. Any activities relating to donated foods that the FSMC will be responsible for, in accordance with 250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7 CFR part 250.

22. The FSMC will ensure that its system of inventory management will not result in the LEA being charged for donated foods.

Licenses and Taxes

1. The FSMC shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes, for FSMC employees; the FSMC shall hold the LEA harmless for all claims arising from payment of such taxes and fees.

2. The FSMC shall obtain and post all licensees and permits as required by federal, state, and/or local law.

3. The FSMC shall comply with all LEA building rules and regulations.

Insurance

1. The LEA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella.

2. The contract of insurance shall provide for notice to the LEA of cancellation of insurance policies 30 days before such cancellation is to take effect.

Miscellaneous

1. The LEA, in the event that the FSMC is not able to perform under this contract due to events beyond the reasonable control of FSMC; i.e., strike, labor or material shortage, fire, flood, or other casualty or Acts of God, may, at their option, terminate this contract and assume control of the facilities, equipment, food supplies, expendables, etc., necessary for the continued operation of the LEA's food service operation.

2. Buy American Provision under the National School Lunch Program and the School Breakfast Program: The FSMC must purchase, to the maximum extent practicable, domestic donated foods that are produced in the United States. Substantially using agricultural commodities that are produced in the United States. "Substantially" means that over 51 percent of the final processed products consist of agricultural donated foods that were grown domestically. (SP-02-10)

3. Both LEA and FSMC agree to comply with Section 306 of the Clear Air Act of 1970 as amended (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).

4. The LEA and FSMC must recognize energy efficiency standards contained in State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

5. No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, or do not meet detailed specifications as developed by the LEA for each food component as specified in 7 CFR, Part 210.10, or do not otherwise meet the requirements of the contract. (7CFR 210.16(c)(3))

6. Refer to Grade and Quality Specification sheet containing purchased food specifications; i.e., grade, purchase units, style, condition, weight, ingredients, formulations and delivery times, as outlined by LEA and agreed to by FSMC in procuring food components. (7CFR 210.6(c)(3))

7. The FSMC shall maintain such records as the LEA will need to support its claim for reimbursement under this part, and shall, at a minimum, report claim information to the LEA promptly at the end of each month. Such records shall be made available to the LEA upon request, and shall be retained in accordance with 210.23(c). (7 CFR 210.16(c)(1))

8. Upon request, make all accounts and records pertaining to its LEA available to the SA and to Food Nutrition Services (FNS), for audit or review at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final claim for reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit. (7 CFR 210.9(b)(17))

9. SA representatives and auditors of the USDA and the Comptroller General of the United States and the LEA's independent auditors shall have access to all such records for audit and review upon request at a reasonable time and place. Authorized representatives of the LEA, the SA, or the USDA shall have the right to conduct on-site administrative reviews of the food service program.

10. The LEA and FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60.

11. The LEA may terminate this contract for breach/neglect as determined by LEA when considering such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to LEA. The LEA is the responsible authority without recourse to FNS or the SA for the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to the local, state, or federal authority that has proper jurisdiction. (7 CFR 210.16(b)(2), 210.21(b))

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

    Furthermore, the LEA's access or use of such software shall not create any right, title interest, or copyright in such software and the LEA shall not retain such software beyond the termination of the agreement. In the event of any breach of this provision, the FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. The LEA's obligations under this section are subject to its obligations under the Missouri Open Records Act. This provision shall survive termination of the agreement.

13. Any discovery, invention, software, or programs paid for by the LEA shall be the property of the LEA to which the SA and USDA shall have unrestricted rights.

14. The FSMC certifies that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

GRADE AND QUALITY SPECIFICATIONS

A. **Meats**

(1) Beef --- All beef cuts will be USDA Top Range Choice steer and heifers used only. Primal cuts purchased will include round, loin, flank, rib, and chuck. No plate or shank cuts will be used.

(2) Pork --- USDA No. 1, cured, smoked, and fresh.

(3) Lamb --- U.S. Choice, no mutton used.

(4) Veal --- U.S. Choice.

B. **Poultry –** U.S Grade "A"

C. **Fish** -- Grade "A" where grade exists.

D. **Grains/Breads**

(1) Products to be made with whole-grain or enriched meal or flour.

(2) Pasta: Made from enriched semolina durum wheat flour.

E. **Dairy -- Minimum Standards**

(1) Milk --- Grade "A" under 30,000 bacterial c.c.

(2) Cream -- 20% butterfat.

(3) Buttermilk -- 8 ¼ % milk solids.

(4) Whipping Cream -- Heavy, 36% butterfat. Whipped topping and dried milk solids shall be used for baking purposes only.

(5) Ice Cream -- U.S, Grade "AA".

(6) Cheese -- U.S. Grade "AA".

F. **Beverages Other Than Milk**

(1) Coffee -- Grade "1", no soluble used.

(2) Tea -- Orange Pekoe and Pekoe or higher grade.

G. **Eggs -** Grade "A" Large, fresh – No storage eggs will be used.

H. **Canned Fruits and Vegetables** -- U.S. Grade "A" or U.S. Fancy only.

I. **Fresh and Frozen Fruits and Vegetables –**

(1) Apples -- U.S. Extra Fancy

(2) Apricots -- U.S. No. 1

(3) Grapes -- Fancy

(4) Winter Pears -- Extra No. 1

(5) Brussels Sprouts -- U.S. No. 1

(6) Broccoli -- Fancy

(7) Tomatoes -- (Greenhouse) Fancy No. 1

Items such as peaches, pears, and fruit cocktail are only available as Grade B. Specifications of these items should <u>not</u> exceed Grade B.

J. **Miscellaneous Groceries** -- Highest grade obtainable. U.S. No. 1.

K. **Condiments** -- U.S. Grade "A".

CONTRACT SIGNATURE PAGE

The FSMC and LEA certifies that they shall operate in accordance with all applicable State and Federal regulations. Both parties certify that all terms and conditions within the contract shall be considered binding. Any misstatements in the document shall be treated as fraudulent. The undersigned acknowledges that the representations made in this document are material and important and will be relied upon.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

(LEA)	(FSMC)
(Signature)	(Signature)
(Title)	(Title)
(Date)	(Date)

ALL CONTRACTS MUST BE APPROVED BY THE STATE AGENCY

This contract is not valid until it is reviewed and approved by the State Agency. The FSMC is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to date below, the State of Missouri may not be obligated for payment. The LEA will receive notification of approval from the SA by approval letter via email.

STATE AGENCY USE ONLY

(State Agency Signature)

(Date)