

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco
and
[Insert name of contractor]
[Insert PeopleSoft Contract ID]**

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name of Contractor] (“Contractor”) and City.

Recitals

WHEREAS, the Department of Children, Youth and Their Families (“Department”) wishes to procure summer and school-year meals and snacks for San Francisco children and youth from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals (“RFP”) entitled [enter RFP name] issued through Sourcing Event ID [Enter Number]; and

WHEREAS, this Contract is deemed exempt from Chapter 14B of the San Francisco Administrative Code because local preferences are not permitted by the funding source and, as such, there is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the Civil Service Commission under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period of [insert number of years]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the Department of Children, Youth and Their Families.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (“Chapter 12M”). Confidential Information includes, without limitation, City Data.

1.6 “Contractor” means [\[insert name and address of contractor\]](#).

1.7 “Deliverables” means Contractor’s or its subcontractors’ work product, including any partially-completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.8 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 “Party” and “Parties” means City and Contractor either individually or collectively.

1.10 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on June 1, 2025 and expire on June 30, 2026, unless earlier terminated as otherwise provided herein.

2.2 **Options to Renew.** City has the option to renew the Agreement for a period of four (4) additional years. City may exercise this option at City's sole and absolute discretion by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement." Extensions may be for the whole or partial period provided for above.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.1.2 **Maximum Costs.** City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation.

3.3.1 **Calculation of Charges and Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed [insert whole dollar amount in numbers and words], the breakdown of which appears in Appendix B, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

3.3.3 **Withhold Payments.** If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments due to Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 **Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 **Reserved.**

3.3.6 **Getting paid by City for Services.**

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.7 **Grant Funded Contracts.**

(a) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to City. As part of the terms of receiving the funds, City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix C, "Additional Contract Provisions and Specifications (USDA)," and Appendix E, "General Terms and Conditions." To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(b) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed due to Contractor's non-compliance with the Grant Terms, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(c) **Subgrantees.** Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor or service provider.

3.3.8 **Payment Terms.**

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.

(b) **Reserved.**

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

3.6 **Reserved.**

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in **Appendix A, "Scope of Services."** Officers and employees of City are not authorized to request and City is not required to compensate for Services beyond those stated.

4.2 **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

4.3 **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless

inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Section 4.4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor is not performing in accordance with the requirements of this Section, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys’ fees, arising from this Section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Reserved.**

4.7 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of Five Thousand Dollars (\$5,000) per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

4.8 **Performance Bond.** The Contractor is required to furnish a performance bond in a form acceptable to City, in a sum of not less than 10% of the annual amount of the contract to guarantee the faithful performance of this contract. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

4.9 **Reserved.**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation Liability Insurance, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) **Reserved.**

(e) **Reserved.**

(f) **Reserved.**

(g) **Reserved.**

5.1.2 Additional Insured.

(a) The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco and its Officers, Agents, and Employees.

(c) **Reserved.**

5.1.3 Waiver of Subrogation. The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.

5.1.4 Primary Insurance.

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) **Reserved.**

5.1.5 Other Insurance Requirements.

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco and its officers, agents, and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.4 Under no circumstances will City indemnify or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the term of this Agreement.

Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience.

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination (“Notice of Termination”). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (“Termination Date”).

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

- (a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.
- (b) Halting the performance of all Services on and after the Termination Date.
- (c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (d) At City’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
- (e) Subject to City’s approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
- (f) Taking such action as may be necessary, or as City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the Termination Date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which City has not already made payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total

of 10% of Contractor’s direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor’s final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City’s payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor, or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor, or with respect to any substantial part of Contractor's property; (ii) constituting an order for relief or approving a petition for relief, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 Default Remedies. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent in accordance with Article 11.

8.3 Cancellation for Cause. The Contract may be canceled for cause by either party with a sixty (60)- day notification. Notification must be made in writing.

8.4 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or

provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.5 Rights and Duties upon Termination or Expiration.

8.5.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	8.2.2	Default Remedies
3.3.7(a)	Grant Funded Contracts – Disallowance	9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

8.5.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City’s prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as

documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does

not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance. Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement; and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) and the California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved.

10.13 Working with Minors. Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and Section 10.14, "Consideration of Criminal History in Hiring and Employment Decisions," of this Agreement, this Section shall control.

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from

time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Nonprofit Contractor Requirements.

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least \$250,000 in City or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.16 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Distribution of Beverages and Water.

10.17.1 **Sugar-Sweetened Beverage Prohibition.** The scope of Services in this Agreement includes the sale, provision, or distribution of beverages to or on behalf of City. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 **Packaged Water Prohibition.** The scope of Services includes the sale, provision, or distribution of water to or on behalf of City. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Brett Conner Grant Manager Department of Children, Youth and Their Families 1390 Market Street, Suite 900 San Francisco, California 94102 brett.conner@dcyf.org
To Contractor:	Name Title Company Address Email Phone

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Laws Requiring Access for People with Disabilities.**

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 **Reserved.**

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract including the appendices, sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or

unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City's terms and Contractor's printed terms attached, City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

11.14 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

Article 12 Department Specific Terms

12.1 **Reserved.**

Article 13 Data and Security

13.1 **Nondisclosure of Private, Proprietary or Confidential Information.**

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such

information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 **Reserved.**

13.3 **Reserved.**

13.4 **Management of City Data.**

13.4.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.2 **Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

13.6 **Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall

notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 **MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

[company name]

Sherrice Dorsey-Smith
Acting Executive Director
Department of Children, Youth and Their Families

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: [Supplier Number]

Approved as to Form:

David Chiu
City Attorney

By: _____
Valerie J. Lopez
Deputy City Attorney

Approved:
Sailaja Kurella
Director of the Office of Contract Administration,
and Purchaser

By: _____

Name: _____

Appendices

- | | |
|--|---|
| A: Scope of Services | D: Additional Contract Provisions and Specifications (USDA) |
| B: Calculation of Charges | E: Meal Service Sites |
| C: Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP) Requirements | F: General Terms and Conditions |
| | G: Assurance of Civil Rights Compliance |

Appendix A Scope of Services

1. Description of Services

Contractor agrees to perform the following Services:

[Name of Contractor] will provide meals to the Department of Children, Youth and Their Families (DCYF) that comply with the nutrition standards established by the United States Department of Agriculture (USDA) for the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP). DCYF will be responsible for claiming reimbursement from the appropriate State agency for all meals served to children enrolled in DCYF programs.

Both [Name of Contractor] and DCYF will comply with all applicable Federal, State and local statutes and regulations with regard to the preparation and consumption of meals which meet the Child and Adult Care Food Program and Summer Food Service Program meal requirements, including, but not limited to, all applicable regulations relating to the overt identification of needy pupils, the nutritional content of meals, and nondiscrimination. All records maintained by [Name of Contractor] and DCYF with bearing to the agreement will be open to inspection by proper Federal, State, and local authorities in accordance with applicable statutes and regulations.

FOOD CONTRACTOR CONTRACT WILL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING WORK:

1. All meals furnished for DCYF Child and Adult Care Food Program and Summer Food Service Program under this contract must meet or exceed United States Department of Agriculture requirements. All yields of cooked and uncooked products will conform to yields identified in the United States Department of Agriculture Food Buying Guide. <https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG>
2. Meals will be prepared and packaged daily by the Contractor's personnel. Each site will receive a specified number of unitized meals, which will include milk (1% or non-fat), utensils and condiments. Contractor must have the capacity to procure, prepare and deliver meals as vended in this contract each day during the school year.
3. The contractor will be responsible for delivery of all meals and dairy products at the specified time. Adequate refrigeration must be provided during transportation and delivery of all food to insure the wholesomeness of food at delivery in accordance with state and local health codes. Temperature of food must be maintained at 41 degrees or below (for refrigeration). For sites without adequate refrigeration capacity, Contractor will deliver food within a mutually-agreed upon delivery time.
4. Meals will be delivered and unloaded at the designated site daily by the Contractor's

personnel at each of the meals sites at times verified in advance with DCYF. DCYF will reserve the right to add or delete feeding sites at any time. DCYF and Contractor must mutually agree to the addition of sites including information agreed upon such as service start date and delivery windows. This will be done by the Sponsor in writing to the Contractor at least 4 business days in advance of the start or end date. A timeline for changes will be agreed upon by the Contractor and DCYF prior to contract. Any change in transportation cost that occurs as a result of adding or deleting centers will be negotiated and noted in the modification. The contractor's invoice will show the cost as a separate item for those sites.

5. Contractor must provide exactly the number of meals ordered. Counts of meals will be made by site staff at all feeding sites before meals are accepted. Damaged or incomplete meals will not be reimbursed by DCYF.

6. Contractor will provide management supervision at all times and maintain constant quality control inspections to check for temperature control, portion size, appearance and packaging in addition to the quality of products; following state and local requirements.

7. Contractor will furnish meals for DCYF 5 days a week in accordance with the 11-day menu cycle they propose, which will adhere to USDA Meal Requirements, for the duration of the program. The menu cycle should include a variety of healthy, fresh and culturally diverse entrees and sides. Contractor may propose hot meals or a combination of both hot and cold. In the case of hot meals, entrées will be delivered cold for reheating on site.

8. Students with special dietary needs must have on file a signed statement by a medical doctor or a recognized medical authority. Contractor will accommodate special needs regarding food allergies resulting from the (8) major allergens as defined by the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA): dairy, soy, peanut, tree- nut, fish, shellfish, egg, and wheat. Contractor is not required to modifying texture, provide items outside of those it sources (i.e. nutritional supplements), or change the nutritional profile of individual menu items or foods to meet any of the needs associated with disabilities. These types of accommodation must be addressed by DCYF. As mutually agreed upon, there may be an additional charge for meal accommodations outside the vegetarian and dairy-free meal alternatives.

9. Contractor must be able to accommodate requests for regular bagged meals for field trips. These meals will also have to meet the menu requirements and food safety guidelines of DPH local and state.

10. Contractor will maintain records supported by delivery tickets, purchase orders, production records for this contract or other evidence for inspection and reference to support payments and claims.

11. The books and records of the contractor, pertaining to this contract, will be available for a period of three years from the date the agency submits to CDE/CDSS the final claim

for reimbursement for meals provided under this contract, or until the final resolution of any audits for investigation and audit by representatives of CDE/CDSS, representatives of the U.S. Department of Agriculture, the agency and the Controller General of the United States at any reasonable time and place.

12. Contractor will have to provide sourcing data on fresh produce, meat poultry, fish, eggs, bread and dairy products, according to applicable Federal, state, and City regulations.

13. Contractor will make its preparation, production and transportation records available for USDA, CDE/CDSS, DCYF and all state and local health inspections at any time during this contract period.

14. Contractor will always promptly contact designated DCYF staff in case of an emergency when meals cannot be delivered or staff is not available at a site to sign for the food. Food will never be left unattended at a site.

15. Contractor will not subcontract with any other company for the total meal, the meal assembly or meal delivery.

16. Contractor must provide all services listed above at a per unit price set in Appendix 6. DCYF will pay the Contractor for all meals prepared and delivered in accordance with CACFP and SFSP contract regulations.

17. Contractor will have to provide a Bid Bond at the time of proposal submission and will provide Performance Bond 10 days after the execution of the contract. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570.

2. Location of Work

See Appendix F (Meal Service Sites)

3. Reports

Contractor shall submit written reports as requested by the Department of Children, Youth and Their Families. Format for the content of such reports shall be determined by the Department of Children, Youth and Their Families. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

4. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the Department of Children, Youth and Their Families will be **Michelle Kim**.

5. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**Appendix B
Calculation of Charges**

1. **Project Cost.** In accordance with Article 3 of this Agreement, Contractor’s total compensation under this Agreement is detailed below, inclusive of all costs required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Article 3, Section 3.3, of this Agreement.

Department of Children, Youth and Their Families (DCYF) will operate nutrition sites through the Summer Food Service Program Child and Adult Care Food Program (when applicable) on Mondays-Fridays during the summer and school year. Specific schedules will be developed as needed to provide services as required.

The contract amount is determined by the anticipated Number of Days of Service multiplied by the average agreed upon number of meals to be delivered each day multiplied by the cost per meal.

		Summer 2025	2025-2026 School Year
Date Range		TBD	TBD
Number of Operational Days		TBD	TBD
Number of Youth		TBD	TBD
Meal	Supper/Lunch	TBD	TBD
	Snack	TBD	TBD
	Breakfast	TBD	TBD
Subtotal: Meals			
Serviceware		TBD	TBD
Allergy/Special Needs Food and Beverage		TBD	TBD
Subtotal: Other Items		TBD	TBD
TOTAL		TBD	TBD

Number of youth and number and type of meals to be provided is subject to change. Actual service levels to be provided will be determined throughout the service period by mutual agreement.

2. **Unit Pricing.** Pricing per meal provided will be as follows for the duration of the contract:

	Summer 2025	2025-2026 School Year
Lunch	TBD	TBD
Snack	TBD	TBD
Breakfast	TBD	TBD

3. **Price Adjustments.** Contractor's Prices are to be firm for the first year of the Agreement. Thereafter, should City exercise its option renew the Agreement per Section 2.2, City and Contractor may agree to increase Contractor's Prices by an amount mutually acceptable to the parties in future years.

A. When to request a Price Adjustment:

1. Requests for Price Adjustments must be made in writing to City.
2. Contractor may request Price Adjustments no sooner than twelve (12) months from the Proposal Due Date.
3. Only (1) one Price Adjustment shall be approved in any twelve (12) month period.
4. If approved, Price Adjustments will be implemented with an Amendment to this Agreement and shall be effective upon execution of the Amendment.

B. How Price Adjustments will be Calculated:

Contract price may be increased on an annual basis as evidence by the percentage changes in the USDA reimbursement rates and in comparison to the Consumer Price Index for all urban consumers based on food eaten away from home - specific to the San Francisco Bay Area Region. Changes in price cannot exceed CPI data percent increases plus 2%. The Proposer agrees to consult with the Agency regarding any unsuspected or unforeseen circumstances that may result in modification to the originally agreed upon cost per meal (for fixed-price contracts only) contract at the time of execution (based year or optional renewal years). Should it become necessary to implement a price adjustment, the Proposer agrees to support the action by an appropriate standard or cost index (i.e. Consumer Price Index).

Commented [BC1]: Michelle - this paragraph is taken from the RFP, so as with that document we need to confirm whether the 2% figure is something we are running with.

The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Proposal Due Date.

4. **Invoicing.** Contractor will submit invoices to DCYF on a monthly basis.

Invoices will be sent electronically along with a spreadsheet indicating the number of meals delivered and received at each site within that four-week window, as supported by the Contractor copies of their delivery receipts. Contractor will immediately mail or deliver the City copies of the delivery receipts as supporting documentation.

The invoice will include; Contractor name, address, unique invoice number for each invoice and must include the time frame that the City is being billed, the total number of meals meeting all program requirements served during that time frame, the cost of each meal, and any additional charges that might be incurred during that time period (listed separately and in detail).

The spreadsheet explaining the total number of meals will include the number of meals served day by day during the time period indicated on the invoice. DCYF staff will check these numbers against the delivery receipts each site submits and approve or challenge the invoice in five business days after receiving the electronic invoice and spreadsheet.

Once DCYF staff has confirmed acceptance of the invoice, DCYF staff will process payment to the Contractor within Thirty (30) days, and DCYF will make every effort to process the payment sooner.

Payments are to be made electronically at the Contractor's request.

Appendix C
Child and Adult Care Food Program (CACFP) and
the Summer Food Service Program (SFSP) Requirements

SUMMER FOOD SERVICE PROGRAM (SFSP) - MINIMUM REQUIREMENTS FOR
SUMMER BREAKFAST, SUMMER LUNCHESES AND SUMMER SNACKS

1. Contractor should have a minimum of 2 years recent experience preparing and delivering food for a USDA Child Nutrition Program (i.e. National School Lunch Program, Summer Food Service Program, Child and Adult Care Food Program, etc.).
2. Contractor must have a current state or local health certification for the facility where meals are prepared and held before delivery/consumption. **A copy of this certification must be included with the RFP proposal.** Contractor will need to maintain their state or local health certification throughout their contract and submit to DCYF when requested.
3. Contractor should have existing internal and external systems of record keeping around food procurement, menu development, food evaluations, staff communications regarding orders and routing systems, etc.
4. Contractor will commit time, facilities and quality staff to accommodate the needs of the Summer Food Service Program (summer breakfast, summer lunches and summer snacks) with DCYF during the months of June through August beginning June 2025. Contractor should also be available for preparation and consultation meetings with DCYF both before and after the program (typically March-September).
5. Meals must conform to the cycle menus, quality standards, and food specifications approved by the CDE according to the USDA SFSP requirements stated in 7 CFR Part 225. You may find more details by visiting USDA Food Nutrition Services website at: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-225>. Contractor must always meet the current regulations (including any changes or updates to the meal pattern requirements over the course of the contract). Changes include but are not limited to the Final Rule - Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans (Attachment 13).
6. Contractor must provide date menus for all meals/snacks. The menus must specify each food item that meets the meal pattern requirements, type of milk, foods that are whole grain, or whole grain-rich, names of breakfast cereals, etc.
7. Contractor must ensure that they are meeting all health and sanitation requirements including but not limited to health codes under California, City and County of San Francisco, and their local jurisdiction. Contractor must ensure they are meeting health and sanitation requirements at all times.
8. Contractor must ensure that the meal preparation site and transportation units are periodically inspected to determine bacteria levels. Contractor will promptly submit results of the inspections to DCYF, San Francisco Department of Public Health and the California Department of Education (CDE).

9. All books and records of the Contractor must be made available to DCYF, CDE or the Federal Office of Inspector General (OIG) at any reasonable time and place for a period of three years from the date of receipt of final payment under the contract or until all audit issues are resolved.
10. Contractor will have the capacity to prepare the following meals, hold them at temperatures within food safety guidelines, and deliver those meals in a timely fashion. Contractor may also propose an alternate to delivering meals (i.e. sites picking up snacks from a central location for those participating in snack only) as long as it follows food safety guidelines. See Attachment 12 for site list details.
11. In addition to meeting USDA requirements, Contractor will seek to use the highest quality fresh, natural, local and sustainable ingredients available within the price point. Contractor will also seek to provide products that are whole grain, low sodium, low fat, low/no added sugars, and free of trans fats within the price point. Contractor must include the procedures for formal purchase.
12. Contractor will provide leak-proof packaging that adheres to the San Francisco Environmental Code, Chapter 16: https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_environment/0-0-0-1426.
13. Contractor agrees to forfeit payment for meals that are not complete such as when items are missing, damaged, or not unitized.
14. Contractor agrees to forfeit payment for meals that are not delivered within one hour of the agreed upon delivery time.
15. Contractor agrees to forfeit payment for meals that are spoiled, unwholesome at the time of delivery, or do not meet the SFSP meal requirements.
16. In case of nonperformance or noncompliance on the part of the Contractor, the Contractor shall pay DCYF for any excess costs the agency incurs by obtaining meals from another source. DCYF may also require Contractors to pay a fee for nonperformance issues.
17. Contractor understands that neither CDE nor USDA assumes liability for payment of any differences between the number of meals delivered by the Contractor and the number of meals served by DCYF that are eligible for reimbursement.
18. Contractor will provide a Bid Bond in the amount of 5% of the estimated contract price. Contractor that does not include a bid bond with their proposal will be considered unresponsive and will be rejected. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570.
19. Contractor will provide DCYF and CDE with a performance bond within 10 days after being awarded the contract. The performance bond will be in the amount of 10% of total contract amount as CDE will determine. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570.

SFSP – SCOPE OF WORK

FOOD VENDOR CONTRACT WILL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING WORK:

1. All meals furnished for DCYF's SFSP program under this contract must meet or exceed United States Department of Agriculture requirements set out in SFSP meal pattern requirements. All yields of cooked and uncooked products will conform to yields identified in the USDA Food Buying Guide. For more information, please visit USDA Food Nutrition Services at: <https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>
2. Meals will be prepared and packaged daily by the Contractor's personnel. Each site will receive a specified number of unitized meals, which will include milk (1% or non-fat), utensils and condiments. Contractor must have the capacity to procure, prepare and deliver these meals [see Attachment 12]
3. The Contractor will be responsible for delivery of all meals and dairy products at the specified time. Adequate refrigeration or heating must be provided during transportation and delivery of all food to ensure the wholesomeness of food at delivery in accordance with state and local health codes. Temperature of food must be maintained at 41degrees or below (for refrigeration) and above 135 (for heated meals) during transport and for on-site holding. Competitive proposals will have equipment for sites with no reheating and/or cold and heating holding equipment for 20-40 sites.
 - a. On site holding means *leaving* heating and cooling equipment such as electric cambros, ice chests (with ice) or steam tables. DPH will use temperature as a public health control and will not accept thermal bags but will accept hard-shelled thermal containers with ice in them.
4. Meals will be delivered (or proposed alternate solution) and unloaded at the designated site daily by the Contractor's personnel at each of the 50-80 summer sites. Competitive proposals will be able to deliver meals during typical non-school based summer program hours (typically between 8am-11am) – see Attachment 12 for example.
5. DCYF will reserve the right to add or remove feeding sites at any time, but sites will not exceed 85 during the summer. Sites are located throughout the City and County of San Francisco. A timeline for changes will be agreed upon by the Contractor and DCYF prior to contract. Any change in transportation cost that occurs as a result of adding or deleting centers will be negotiated and noted in the modification. The Contractor's invoice will show the cost as a separate item for those sites.
6. Contractor must provide exactly the number of meals ordered. Counts of meals will be made by site staff at all feeding sites before meals are accepted. Damaged, incomplete, noncompliant or non-utilized meals will not be reimbursed by DCYF.
7. DCYF will order meals Wednesday of the week preceding the week of delivery (or different if mutually agreed upon between parties of this contract). Orders will be placed for the total number of days in the succeeding week, and will include breakdown totals for each site and each type of meal. DCYF reserves the right to increase or decrease the number of meals ordered on a 48-hour notice via email (or less if mutually agreed upon between the parties to this contract).
8. Contractor will provide management supervision at all times to meet state and local requirements. Contractor will maintain constant quality control inspections to check for temperature control, portion size, appearance, packaging, and quality of products.

9. Contractor will provide meals of quality standards as bid. Contractor will furnish meals for DCYF 5 days a week in accordance with the 11-day menu cycle they proposed in their RFP submission (Attachment 5a), which will adhere to USDA Meal Requirements. The menu cycle should include a variety of healthy, fresh and culturally diverse foods. Contractors may propose hot meals, cold meals or a combination of both; competitive proposals include two to three hot meals per week.
10. Contractor agrees to provide all requested documentation to DCYF, prior to or at the time of the scheduled delivery or pick-ups, including but not limited to the following:
 - a. Dated menus for all meals/snacks. The menus must specify each food item that meets the meal pattern requirements, type of milk, foods that are whole grain or whole grain-rich, names of breakfast cereal, etc.
 - b. Documents that include the numbers of meals provided and delivered, specific foods provided to meet all required meal pattern requirements, serving size information for each food item, and the total quantities of all foods
 - c. Product information detailing the packaging, nutrition facts label, ingredients for items (if served) such as breakfast cereal, tofu, yogurt, whole grain or whole grain-rich foods, tofu, etc.
 - d. Product information for combination foods that contain more than one food component (i.e. meat and grain), child nutrition labels or product formulation statements for commercially prepared items (i.e. chicken nuggets, fish sticks, ravioli, meatballs, etc.), and standardized recipes for in-house prepared dishes (i.e. chicken noodle casserole).
11. Contractor must be able to meet special meal requirements to meet ethnic or religious needs or dietary modifications for children with special physical or medical needs when accompanied by a physician's note, which may or may not include any and all modifications according to the Americans with Disabilities Act Amendments Act of 2008. Contractor must be able to provide consistent vegetarian meal options at sites when requested in advance.
12. Contractor must be able to accommodate requests for regular bagged lunches for field trips. These meals will also have to meet the menu requirements and food safety guidelines under the appropriate jurisdictions. Fieldtrip lunches will need to be delivered to the site early on the morning they are needed or delivered the business day prior to when field trip meals are needed. Competitive proposals will be able to deliver fieldtrip meals prior to the departure of their fieldtrip (typically between 7am-10am). DCYF will inform Contractor well in advance of these requests. Fieldtrips meals are requested by sites everyday of summer program and accounts for upwards of 13% of all lunches served.
13. Delivery receipts must be prepared by the Contractor at a minimum in three *copies*: one for the Contractor (to keep for CDE audits), one for DCYF (Contractor to submit in a timely matter for review alongside with monthly invoices to DCYF), and one for the feeding site personnel to remain on-site). Delivery receipts must be itemized to show the number of meals of each type delivered to each site, meal components corresponding to each meal type, time and temperature meals left preparation site and time and temperature when delivered to feeding site. Designees of each site will check accuracy of delivery records and adequacy of meals before signing the delivery receipt. Invoices will be accepted by DCYF only if they accurately represent the delivery receipts, signed by the feeding sites designee at the site.

14. Contractor will maintain food preparation records for three years after the program year of the ending contract. Information must include receipts, invoices, or other evidence that meals met SFSP Meal Pattern.
15. The books and records of the Contractor, pertaining to this contract, will be available for a period of three years from the date the agency submits to CDE the final claim for reimbursement for meals provided under this contract, or until the final resolution of any audits for investigation and audit by representatives of CDE, representatives of the USDA, the agency and the Controller General of the United States at any reasonable time and place.
16. Contractor will have to provide sourcing data on fresh produce, meat poultry, fish, eggs, bread and dairy products, according to applicable Federal, State, and City regulations.
17. Contractor will make its preparation, production and transportation sites available for USDA, CDE, DCYF and all state and local health inspections at any time during this contract period. In addition, Contractor may need to submit standards of procedures for safe food handling, transportation and other relevant documents as requested.
18. Contractor will always promptly contact designated DCYF staff in case of an emergency when meals cannot be delivered or staff is not available at a site to sign for the food. Food will never be left unattended at a site.
19. Contractor will not subcontract with any other company for the total meal, milk or without milk, the meal assembly or meal delivery.
20. Contractor must provide all services at a price point reasonable to the quality of their service in comparison to the current USDA reimbursement rates. DCYF will pay the Contractor for all meals prepared and delivered in accordance with SFSP contract regulations.
21. Contract price may be increased on an annual basis as evidence by the percentage changes in the USDA reimbursement rates and in comparison to the Consumer Price Index for all urban consumers based on food eaten away from home - specific to the San Francisco Bay Area Region. Changes in price cannot exceed CPI data percent increases plus 2%. The Contractor agrees to consult with the Agency regarding any unsuspected or unforeseen circumstances that may result in modification to the originally agreed upon cost per meal (for fixed-price contracts only) contract at the time of execution (based year or optional renewal years). Should it become necessary to implement a price adjustment, the Contractor agrees to support the action by an appropriate standard or cost index (i.e. Consumer Price Index).
22. Contractor will be able to provide a Bid Bond at the time of proposal submission and a Performance Bond within 10 days of being selected as the approved Contractor for this RFP. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570. A Bid Bond not included in Contractor's proposal at the time of submission will be rejected.

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CHILD AND ADULT CARE FOOD PROGRAM (CACFP) – MINIMUM REQUIREMENTS FOR SCHOOL YEAR SUPPERS AND SCHOOL YEAR SNACKS

The selected applicant will have a proven record of accomplishment of providing and delivering unitized meals that meet USDA Child Nutrition Program nutritional and food safety requirements. DCYF expects all Contractors to have proven high quality services and guarantee the professional and cultural competency of all their employees and consultants.

1. It is expected that the agency we contract with will have a minimum of 2 years recent experience preparing and delivering food for a USDA Child Nutrition Program (i.e. National School Lunch Program, Summer Food Service Program, Child and Adult Care Food Program, etc.).
2. Contractor must have a current state or local health certification for the facility where meals are prepared and held before delivery/consumption. **A copy of this certification must be included with the RFP proposal.** Contractor will need to maintain their state or local health certification throughout their contract and submit to DCYF when requested.
3. Contractor should have existing internal and external systems of record keeping around food procurement, menu development, food evaluations, staff communications regarding orders and routing systems, etc.
4. Contractor will commit time, facilities and quality staff to accommodating the needs of the Child and Adult Care Food Program (school-year suppers and school-year snacks) with DCYF during the months of August through June beginning August 2025. Contractor should also be available for preparation and consultation meetings with DCYF both before and after the program (typically July-June).
5. Meals must conform to the cycle menus, quality standards, and food specifications approved by the CDSS according to the USDA CACFP requirements stated in 7 CFR Part 226. You may find more details by visiting USDA Food Nutrition Services website at: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-226>. Contractor must always meet the current regulations (including any changes or updates to the meal pattern requirements over the course of the contract). Changes include but are not limited to the Final Rule - Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans (Attachment 13).
6. Contractor must ensure that they are meeting all health and sanitation requirements including but not limited to health codes under California, City and County of SF, and their local jurisdiction. Contractor must ensure they are meeting health and sanitation requirements at all times.
7. Contractor must ensure that the meal preparation site and transportation units are periodically inspected to determine bacteria levels. Contractor will promptly submit results of the inspections to DCYF, SF Dept. of Public Health and CDSS.
8. All books and records of the Contractor must be made available to DCYF, CDSS or the Federal Office of Inspector General (OIG) at any reasonable time and place for a period of three years from the date of receipt of final payment under the contract or until all audit issues are resolved.
9. Contractor will have the capacity to prepare the following meals, hold them at temperatures within food safety guidelines, and deliver those meals in a timely fashion. Contractor may also

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proposed an alternate of delivering meals (i.e. sites picking up snacks from a central location for those participating in snack only) as long as it follows food safety guidelines (Attachment 12)

10. In addition to meeting USDA requirements, Contractor will seek to use the highest quality fresh, natural, local and sustainable ingredients available within the price point. Contractor will also seek to provide products that are whole grain, low sodium, low fat, low/no added sugars, and free of trans fats within the price point. Contractor must include the procedures for formal purchase.
11. Contractor will provide leak-proof packaging that adheres to the San Francisco Environmental Code, Chapter 16: https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_environment/0-0-0-1426
12. Contractor agrees to forfeit payment for meals that are not complete such as when items are missing or not unitized.
13. Contractor agrees to forfeit payment for meals that are not ready within one hour of the agreed upon delivery time.
14. Contractor agrees to forfeit payment for meals that are spoiled, unwholesome at the time of delivery, or do not meet CACFP meal requirements.
15. In case of nonperformance or noncompliance on the part of the Contractor, the Contractor shall pay DCYF for any excess costs the agency incurs by obtaining meals from another source. DCYF may also require Contractors to pay a fee for nonperformance issues.
16. Contractor understands that neither CDSS nor USDA assumes liability for payment of any differences between the number of meals delivered by the Contractor and the number of meals served by DCYF that are eligible for reimbursement.
17. Contractor will provide a Bid Bond in the amount of 5% of the estimated contract price. Contractor that does not include a bid bond with their proposal will be considered unresponsive and will be rejected. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570.
18. Contractor will provide DCYF and CDSS with a performance bond within 10 days after being awarded the contract. The performance bond will be in the amount of 10% of total contract amount as CDSS will determine. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570.

CACFP – SCOPE OF WORK FOR SCHOOL YEAR SUPPERS AND SCHOOL YEAR SNACKS

FOOD VENDOR CONTRACT WILL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING WORK:

1. All meals furnished for DCYF's CACFP program under this contract must meet or exceed United States Department of Agriculture requirements set out in CACFP meal pattern requirements. All yields of cooked and uncooked products will conform to yields identified in the USDA Food

Buying Guide. For more information, please visit USDA Food Nutrition Services at: <https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>

2. Meals will be prepared and packaged daily by the Contractor's personnel. Each site will receive a specified number of unitized meals, which will include milk (1% or non-fat), utensils and condiments. Contractor must have the capacity to procure, prepare and deliver these meals (Attachment 12)
3. The Contractor will be responsible for delivery of all meals and dairy products at the specified time. Adequate refrigeration or heating must be provided during transportation and delivery of all food to insure the wholesomeness of food at delivery in accordance with state and local health codes. Temperature of food must be maintained at 41 or below (for refrigeration) and above 135 (for heated meals) during transport and for on-site holding. Competitive proposals will have equipment for sites with no reheating and/or holding equipment for 10 sites.
 - a. On site holding means *leaving* heating and cooling equipment such as electric cambros, ice chests (with ice) or steam tables. DPH will be using temperature as a public health control and will not accept thermal bags but will accept hard-shelled thermal containers with ice in them.
4. Meals will be delivered (or proposed alternate solution) and unloaded at the designated site daily by the Contractor's personnel at each of the 35-45 school year locations at times verified in advance with DCYF. Competitive proposals will be able to deliver meals during typical non-school based afterschool program hours.
5. DCYF will reserve the right to add or delete feeding sites at any time, but sites will not exceed 45 during the school-year. A timeline for changes will be agreed upon by the Contractor and DCYF prior to contract. Any change in transportation cost that occurs as a result of adding or removing sites will be negotiated and noted in the modification. The Contractor's invoice will show the cost as a separate item for those sites.
6. Contractor must provide at least the number of meals ordered. Counts of meals will be made by site staff at all feeding sites before meals are accepted. Damaged, incomplete, noncompliant or non-utilized meals will not be reimbursed by DCYF.
7. DCYF are to order meals Wednesday of the week preceding the week of delivery (or different if mutually agreed upon between parties of this contract). Orders will be placed for the total number of days in the succeeding week, and will include breakdown totals for each site and each type of meal. DCYF reserves the right to increase or decrease the number of meals ordered on a 48-hour notice via email (or less if mutually agreed upon between the parties to this contract).
8. Contractor will provide management supervision at all times to meet state and local requirements. Contractor will maintain constant quality control inspections to check for temperature control, portion size, appearance, packaging, and quality of products.
9. Contractor will provide meals of quality standards as bid. Contractor will furnish meals for DCYF 5 days a week in accordance with the 21-day menu cycle they propose (Attachment 5b), which will adhere to USDA Meal Requirements The menu cycle should include a variety of healthy, fresh and culturally diverse entrees and sides. Contractors may propose hot meals, cold meals or a combination of both; competitive proposals include two to three hot meals per week.

10. Contractor agrees to provide all requested documentation to DCYF, prior to or at the time of the scheduled delivery or pick-ups, including but not limited to the following:
 - a. Dated menus for all meals/snacks. The menus must specify each food item that meets the meal pattern requirements, type of milk, foods that are whole grain or whole grain-rich, names of breakfast cereal, etc.
 - b. Documents that include the numbers of meals provided and delivered, specific foods provided to meet all required meal pattern requirements, serving size information for each food item, and the total quantities of all foods
 - c. Product information detailing the packaging, nutrition facts label, ingredients for items (if served) such as breakfast cereal, tofu, yogurt, whole grain or whole grain-rich foods, etc.
 - d. Product information for combination foods that contain more than one food component (i.e. meat and grain), child nutrition labels or product formulation statements for commercially prepared items (i.e. chicken nuggets, fish sticks, ravioli, meatballs, etc.), and standardized recipes for in-house prepared dishes (i.e. chicken noodle casserole).
11. Contractor must be able to meet special meal requirements to meet ethnic or religious needs or dietary modifications for children with special physical or medical needs when accompanied by a physician's note, which may or may not include any and all modifications according to the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. Contractor must be able to provide consistent vegetarian meal options at sites when requested in advance.
12. Contractor must be able to accommodate requests for regular bagged suppers for field trips. These meals will also have to meet the menu requirements and food safety guidelines under the appropriate jurisdictions. Supper field trip will need to be delivered to the site at a potentially different time but on the same day than normally requested. DCYF will inform Contractor well in advance of these requests. Fieldtrip meals usually occur during special occasions such as winter/spring break.
13. Delivery receipts must be prepared by the Contractor at a minimum in three *copies*: two for the Contractor (to keep for CDSS audits and one to submit in a timely matter for review alongside with monthly invoices to DCYF), and one for the feeding site personnel (one to remain on-site). Delivery receipts must be itemized to show the number of meals of each type delivered to each site, time and temperature meals left preparation site and time and temperature when delivered to feeding site. Designees of each site will check accuracy of delivery records and adequacy of meals before signing the delivery receipt. Invoices will be accepted by DCYF only if they accurately represent the delivery receipts, signed by the feeding sites designee at the site.
14. Contractor will maintain food preparation records for three years after the program year of the ending contract. Information must include receipts, invoices, or other evidence that meals met CACFP Meal Pattern.
15. The books and records of the Contractor, pertaining to this contract, will be available for a period of three years from the date the agency submits to CDSS the final claim for reimbursement for meals provided under this contract, or until the final resolution of any audits for investigation and audit by representatives of CDSS, representatives of the U.S. Department of Agriculture, the agency and the Controller General of the United States at any reasonable time and place.

16. Contractor will have to provide sourcing data on fresh produce, meat poultry, fish, eggs, bread and dairy products, according to applicable Federal, state, and City regulations.
17. Contractor will make its preparation, production, and transportation sites available for USDA, CDSS, DCYF and all state and local health inspections at any time during this contract period.
18. Contractor will always promptly contact designated DCYF staff in case of an emergency when meals cannot be delivered or staff is not available at a site to sign for the food. Food will never be left unattended at a site.
19. Contractor will not subcontract with any other company for the total meal, with or without meal, the meal assembly or meal delivery.
20. Contractor must provide all services at a price point reasonable to the quality of their service in comparison to the current USDA reimbursement rates. DCYF will pay the Contractor for all meals prepared and delivered in accordance with CACFP contract regulations. Contract price may be increased on an annual basis as evidence by the percentage changes in the USDA reimbursement rates and in comparison to the Consumer Price Index for all urban consumers based on food eaten away from home - specific to the San Francisco Bay Area Region. Changes in price cannot exceed percent CPI data percent increases plus 2%. The Contractor agrees to consult with the Agency regarding any unsuspected or unforeseen circumstances that may result in modification to the originally agreed upon cost per meal (for fixed-price contracts only) contract at the time of execution (based year or optional renewal years). Should it become necessary to implement a price adjustment, the Contractor agrees to support the action by an appropriate standard or cost index (i.e. Consumer Price Index)
21. Contractor will be able to provide a Bid Bond at the time of proposal submission and a Performance Bond within 10 days of being selected as the approved Contractor for this RFP. Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570. A Bid Bond not included in Contractor's proposal at the time of submission will be rejected.

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Appendix D Additional Contract Provisions and Specifications (USDA)

[Name of Contractor] was selected through a competitive Request for Proposals process to furnish unitized meals to be served to children participating in the Child and Adult Care Food Program for Children and the Summer Food Service Program, established by the United States Department of Agriculture (7 CFR Part 226 and 7 CFR Part 225, respectively). This document sets forth additional terms and conditions applicable to the Agreement between the City and County of San Francisco and Contractor, dated [date of contract].

This contract is specifying that the Contractor will prepare and deliver unitized meals, inclusive of milk, that meet USDA requirements as specified by the CACFP requirements and Sponsor during the school year or SFSP when applicable. Meals will be provided 5 days a week, except during holidays as listed in Appendix C Part 1(G). when all sites and Sponsor will be closed for observance.

1. Requirements Contract:

A. This is a requirements contract for the Contractor to provide meals of quality standards as bid and to furnish unitized meals specified under this agreement in sufficient quantity to meet the requirements of the Sponsor's sites (specified in Appendix F) providing the sites are USDA and Health Department certified as approved. Sites must be identified within 20 business days of the start of services.

B. The quantities of such services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Sponsor's requirements for services set forth in Appendix A do not result in orders in the amounts or quantities described as "estimated" in Appendix B, such events will not constitute the basis for an equitable price adjustment under this contract.

C. The Sponsor will not be required to purchase from the Contractor requirements in excess of the limit on total orders under this contract, if any.

D. The Sponsor may issue orders, which provide for delivery to or performance at multiple destinations.

E. The Sponsor will not be obligated to place any minimum dollar amount of orders under this contract or any minimum number of orders. The utilization of the Contractor for services specified in the Appendix A will be dependent upon the needs and requirements of the Sponsor.

F. In the event of the need for changes in the provisions of this contract, due to regulatory or guidance changes prescribed by the United States Department of Agriculture (USDA) or CDE/CDSS, during the duration of this contract; such events will be considered a basis for renegotiation, with prior approval and agreement from CDE/CDSS, of the terms and conditions of the contract between the agency and the contractor. Authority for such renegotiation must be

requested from CDE/CDSS, in writing, by the Sponsor prior to the commencement of any such renegotiation.

G. The Sponsor will not be in operation or need of meals for the following holidays. The Contractor may offer a shelf stable meal and will work with interested parties to make specific arrangements.

- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving
- Christmas
- New Years
- Martin Luther King
- Presidents Day
- Memorial Day
- Juneteenth

2. Pricing:

A. Pricing was determined by the Contractor as specified in the RFQ Submission Requirements. All bidders were required to submit bids on the same 11-day menu cycle provided by the Sponsor. Unit price will include price of preparation, food, milk, packaging, transportation to all designated sites and all other related costs (e.g., condiments, utensils, etc.). Unit prices will include taxes, but any charges or taxes that are required to be paid under future laws must be paid by the Contractor at no additional charge to the Sponsor.

B. Pricing shall be on the menus described in Contractor's proposal. Any changes to the menu on the insistence of the Contractor or for meals that do not meet reimbursement requirements will not change the unit cost for the Sponsor.

C. No additional fees will apply without amendment to this contract.

3. Evaluation of Bidders:

A. Each bidder was evaluated on the following factors:

- Financial capability to perform a contract of the scope required; and
- Adequacy of plant facilities for food preparation, with approved license certification that facilities meet all applicable state and local health, safety and sanitation standards; and
- Previous experience of the bidder in performing services similar in nature and scope; and
- Other factors such as transportation capability, sanitation, and packaging;

4 Meal Orders:

A. The Sponsor will provide an estimate of daily orders per site within one month of the start of service. The range of servings is estimated. The sponsor reserves the right to change the daily

meal order for each site as outlined in Section B below. The Sponsor is prohibited from ordering more meals than the CAP imposed by the USDA and absolves the Contractor from any pecuniary liability if meals ordered surpass current CAP which excesses is subsequently disallowed by USDA for reimbursement.

B. Sponsor will provide Contractor with final meal site projections weekly on Wednesdays by 5pm but no later than 72 hours as mutually agreed. Meal orders not finalized by the specified time may be subject to fees.

Sponsor will be responsible for emailing Contractor a final spreadsheet of each lunch sites final orders and field trips by the order deadline and entering into Contractor online order system. Sponsor is solely responsible for the accuracy of each site's final lunch orders included in this final spreadsheet regardless of human or technical error. Contractor will prepare unitized meals based on the lunch orders included in the final spreadsheet, and as such will be entitled to reimbursement for each compliant lunch prepared and delivered in accordance with Sponsor's final lunch orders by site. The Spreadsheet will be named using the following format:

DCYFmmddyyyyFINAL where mmddyyyy is the meal service date.

The Sponsor and Contractor will work together to mutually agree on the best checks and balances system for ordering and conformation of orders.

In the event that Sponsor receives last minute cancellations from a site, they will inform the Contractor immediately. The Contractor will make all efforts to accommodate these changes, without charging sponsor for the meals, if possible. Late orders are subject to product availability and may incur a fee. Contractor and Sponsor will work together to come an agreement that is mutually agreeable to both parties in such situations.

C. Sites will have the option of ordering vegetarian options for their sites as a part of their total meal requests. The unit price of these meals will be the same as for all other meals served during the week. The vegetarian options for each day will be the same price as the general menu items. No additional fees will be charged for this service.

D. Sites will have the option of requesting meals to take off-site for field trips. Sponsor will indicate the number of field trip meals in a separate column on the daily order spreadsheet. All of these meals will be cold meals that meet the USDA meal pattern and should be charged accordingly. If additional meals are needed on-site during the regular lunch time for a site receiving an early field trip delivery, the site will receive an additional delivery with meals from the approved general menu for that date. Sites should receive a separate delivery receipt with each delivery for that day.

E. Contractor will provide hot and cold meal options to the sites. Upon request, sites with proper reheating equipment can receive meals delivered cold that will be heated on site. All other sites will be provided cold meals.

5. Menu-Cycle Change Procedure:

A All meals shall conform to the menu cycle outlined in the RFP that follows the USDA Food Buying Guide, as bid. Contractor has authority to request changes to the menu based on non-availability of a product, among other things, but will adhere to the requirements set forth in Child and Adult Care Food Program and Summer Food Service Program Meal Pattern found in the RFP as Attachment 4a and Attachment 4b. Contractor represents that any substitution it makes to the menu will comply with the USDA Food Specifications outlined in USDA Food Buying Guide. Contractor will communicate any change to the menu as soon as is possible but in no event later than one business day prior to lunch service. When an emergency situation exists which might prevent the Contractor from providing a specified meal component, they shall notify the Sponsor immediately so substitutions can be agreed upon. Food component substitutions, due to emergency situations or mutual agreement between the Sponsor and Contractor, shall conform to the USDA Food Specifications.

B. The Sponsor reserves the right to request menu changes within the Contractor's food cost periodically throughout the contract period due to community responses to the food.

C. No later than one (1) week prior to the end of each month, Contractor will provide to DCYF a monthly menu covering the meals to be served for the following month. Contractor will provide menu documentation no later than one (1) week in advance of service upon written request. This will include:

- Monthly Menu portion detail to demonstrate compliance with Meal Patterns.
- Carbohydrate Report to assist parents and staff in ordering for students with diabetes.
- Allergen Report tracking the eight commonly recognized allergen components (wheat, dairy, eggs, soy, shellfish, fish, peanuts, tree nuts) as defined by the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) to assist staff in ordering for special meal accommodations.

6. Delivery and Non Compliance:

A. Contractor delivers meals to each approved site in accordance with the final daily order submitted by Sponsor to Contractor as described in the Meal Orders section above.

B. Contractor will be responsible for the condition and care of meals until Sponsor sites accept delivery and, thereafter, sites will be responsible for maintaining the proper temperature of the meal components until they are consumed. Meals will be delivered and unloaded in one designated location at each site by Contractor's driver by the time set forth, by the Sponsor and Contractor. The Sponsor must ensure that a site supervisor is on duty within these time periods. If unforeseen delays occur, Contractor may also deliver meals within the first half hour of the published meal time if that site has a two hour published lunch time. Contractor will contact Sponsor as soon as possible if unforeseen circumstances occur that will delay deliveries to ensure that Sponsor can communicate this delay to sites and State agencies. If Contractor fails to deliver during agreed upon time window, Sponsor (not site supervisor) still has the option of accepting meals. Delivery outside of the approved time period must be approved in advance by the Sponsor and payment for meals will only be made to Contractor if accepted by CDE/CDSS.

C. No meals will be left at a site unless a Sponsor site designee (Supervisor) is available to receive and sign for the meals. Sponsor will not pay for meals delivered if the delivery receipt is not signed by the site staff.

D. In the event authorized Supervisor is not present during the designated delivery window, Contractor will call Sponsor. Contractor will wait no longer than 5 minutes from the time of calling Sponsor for the Supervisor to meet Contractor's driver and start receiving meals. If no Supervisor comes to accept meals within the 5 minutes, the Contractor's driver will leave a yellow tag at the customary delivery point indicating the date and the time delivery was attempted. If re-delivery is requested by Sponsor and can be accommodated by Contractor, an extra charge may be applied. If re-delivery is not requested by the Sponsor, the full cost of the meals ordered will be reimbursed to Contractor.

E. All reimbursable lunch meals will be delivered in accordance with state and local health codes. Once delivered, Sponsor is responsible for ensuring that lunch meals are stored and distributed at each site in accordance with state and local health codes.

F. At the time of delivery at each site, Sponsor's site supervisor will perform specific activities within a **limited time period** determined by Sponsor and Contractor to allow for timely delivery of meals. If it is determined by the Sponsor and site supervisor that more time is needed for a site to adequately review the meal delivery and complete the delivery receipt, the Sponsor and Contractor may change the delivery window for that site to ensure that all site deliveries on that route remain in compliance. Site supervisors will:

- a. Count complete meals.
- b. Ensure they are compliant with the menu cycle provided by Contractor, including changes communicated to Sponsor.
- c. Ensure the quantity delivered matches the delivery receipt sent by Contractor.
- d. Inspect the quality of the meals. Quality rejections upon receipt are limited to visible mold on fruit or vegetables, milk expiration, crushed lunch items and lunch items that are damaged in a way where they that are not reasonably edible (i.e. sealed packaged product is punctured or lid is torn open). There are no other quality bases for rejection.
- e. Complete Delivery Receipt by:
 - i. Noting accepted quantity of compliant lunch meals
 - ii. Documenting with a brief explanation in the comments section of the delivery receipt any count discrepancies (i.e. fruit or entrees missing) or rejections due to quality (i.e. moldy peaches)
 - iii. Signing Delivery Receipt
 - iv. Obtain Contractor's Driver's signature on the delivery receipt to verify Sponsor's Supervisor claims.
 - vi. Provide Contractor's driver the top/original copy of the delivery receipt.

G. In the event of a shortage or problem relating to quality (DISCREPANCY) Contractor's Driver shall have an opportunity to remedy the DISCREPANCY at the time of delivery using compliant meal items from Contractor's backup inventory

H. If there is a Discrepancy that cannot be remedied upon delivery by Contractor's driver, Contractor must contact Sponsor immediately, by phone. At that time, Contractor and Sponsor will mutually agree on the practicality of re-delivering the lunch items to fulfill the shortfall within the specified lunch time window for that site.

a. If re-delivery is an option, upon re-delivery to remedy count discrepancies or rejections, each copy of the delivery receipt must be updated with the final corrections and signed off by both Contractor driver and Supervisor so full reimbursement for the lunch can be received. Sponsor will not be charged an additional delivery fee for count discrepancies or rejections.

b. If re-delivery is deemed not practical for Contractor, no payment for lunch shortages or rejected meals will be made to the Contractor for meals not meeting the specifications of this contract. The Sponsor reserves the right to procure meals, within the specifications of this contract, from other sources under these conditions with the Contractor being responsible for excess costs incurred, but not being entitled to any adjustment in the event meals are procured at a lesser cost.

I. If after the driver departs, Sponsor's Supervisor discovers that some/few of the meals may be damaged (i.e. burnt, frozen), but not spoiled, site Supervisors should notify the Sponsor, who, in turn, will contact the Contractor representative. Since the meals will probably have been partially consumed and return of the complete meal for credit will be impossible, Sponsor and Contractor will mutually determine whether the meal was both compliant and edible and will determine payment on a case-by-case basis.

J. If after the driver departs, meals are somehow damaged or pilfered, Contractor is entitled to reimbursement for all compliant meals delivered.

K. Program regulations provide that statistical sampling methods may be used to disallow payment for meals not prepared or served in compliance with Child and Adult Care Food Program and Summer Food Service Program regulations. In the event disallowance is contemplated, USDA shall permit the Contractor to make up any shortcomings in meal component/preparation which will negate punitive consequences. In these cases, the Sponsor will have no option to withhold payment to the Contractor. Any service discrepancy corrections are Sponsor responsibility and payment to the Contractor will not be jeopardized.

L. Contractor will deliver meal components accordingly to ensure adequate food safety. In the case of hot meals, entrees will be delivered cold for reheating on site. Each site is responsible for safe storage of Contractor equipment/small wares and shall make equipment available for pickup the next day as indicated. Sponsor will inform all sites of their responsibility to protect

Contractor's equipment, and sites will receive proper storage and handling instructions during the mandatory site training.

M. Adequate refrigeration will be provided during transportation and delivery of all food to insure the wholesomeness of food at delivery in accordance with state or local health codes. Contractor will ensure that food temperature is taken at both time of departure and time of delivery of meals. Food temperatures will be logged so that all meals can be safely consumed within food safety guidelines.

N. Upon acceptance of the meals, the original copy of the delivery ticket, properly completed and authenticated by the site supervisor, will be returned to the driver with the second and third copy being retained by the site supervisor at the site.

O. The Contractor will not be paid for incomplete meals, spoiled, or otherwise unwholesome, meals not delivered within the specified delivery time period and meals rejected because they do not comply with CACFP and SFSP program requirements. In case of nonperformance or noncompliance on the part of the Contractor, the Contractor shall pay the sponsor for any excess costs the agency incurs by obtaining meals from another source.

P. When sites submit requests for meals for field trips, Contractor will deliver all field trip meals with the regularly scheduled meal delivery.

Q. If there are any unforeseen delays, including site supervisor not available for receipt, unusual traffic conditions or natural disaster, Contractor and Sponsor will mutually agree to an alternative delivery time.

R. In the event that food is undeliverable to a site based on error by the site or Sponsor, Sponsor may request that Contractor donate these meals to another approved site or non-profit agency to avoid waste. Contractor has the option of approving or denying this request. Sponsor will still be responsible for the unit price of those meals and a potential 10% of the total cost of the meals if logistical changes incur cost.

S. Sponsor shall pay the Contractor for all meals delivered in accordance with the CACFP and SFSP regulations. CDE/CDSS nor the United States Department of Agriculture (USDA) assumes liability for payment of any differences between the number of meals delivered by the Contractor and the number of meals served by the sponsor that are eligible for reimbursement.

7. Specifications:

A. Packaging:

a. Contractor will deliver compliant meals, packaged and organized by unitized components, to create a complete meal (including milk) in accordance with USDA standards. Sponsor is responsible for ensuring each site distributes all unitized components that comprise a compliant meal to each child. If part of the meal has spilled

and is inedible or no longer meets the minimum size requirements, the Sponsor will not be responsible to pay for a replacement meal to be delivered, if necessary.

b. Contractor has allocated a reasonable amount of condiments per site. If Contractor determines a site is using more than a reasonable allocation, Contractor will give Sponsor the option of purchasing the condiments at their own cost. It is Sponsor's sites sole responsibility to store condiments in refrigeration, if necessary, and provide a secure location to protect from unauthorized use. Meals will be delivered with the following nonfood items: napkins, single service ware when necessary.

c. Contractor will supply cold meal unit or unnecessary-to-heat container and overlay to be plastic or paper and nontoxic.

d. Milk cartons - each carton will be labeled. Labels to include:

- i. Processor's name and address (plant);
- ii. Item identity, meal type;
- iii. Date of production;
- iv. Quantity of individual units per carton.

B. Food Preparation:

Meals will be prepared under properly controlled temperatures and assembled not more than 24 hours prior to delivery.

C. Food Specifications:

- a. All meals must meet the menu cycle and will include, as a minimum, the portions specified by the U.S. Department of Agriculture for each meal.
- b. All meat and meat products, except sausage products, will have been slaughtered, processed and manufactured in plants inspected under a U.S. Department of Agriculture approved inspection and bear the appropriate seal. All meat and meat products must be sound, sanitary and free of objectionable odors or signs of deterioration on delivery.
- c. Sponsor understands the fruit provided by Contractor will come directly from supplier and not be washed. Contractor will aim to ensure that the majority of fruit will be locally sourced, unless it is cost prohibitive to the Contractor or unavailable. Substitutions for fruits can be discussed in advance as stated in section 5.A. Contractor will provide washed fresh fruit to sites, but Contractor recommends that Sponsor encourage sites to wash fruit before eating.

D. Product Specifications:

Milk and milk products are defined as “. . . fluid types of pasteurized flavored or unflavored whole milk, low-fat milk, skim milk, or cultured buttermilk, which meet state and local standards for such milk . . . ” milk delivered hereunder will conform to these specifications. Some lactose free or reduced lactose milk can be supplemental with approval from CDE/CDSS/USDA specification for participating youth who medically cannot consume milk products.

8. Supervision and Inspection:

The Contractor will provide management supervision at all times and maintain constant quality control inspections to check for portion size, appearance and packaging in addition to the quality of products.

9. Record Keeping:

A. Delivery receipts will be prepared by the Contractor at a minimum in three copies: one for the Contractor and two for the feeding site personnel. Delivery receipts must be itemized to show the number of meal components of each type delivered to each center (condiments and supplies do not need to be listed). Designees of the Sponsor at each site will check adequacy of delivery and meals before signing the delivery ticket. Invoices will be accepted by the agency only if they accurately represent the delivery receipts, signed by the Sponsor's designee at the site and Contractor or deemed by the Sponsor to be undeliverable. Upon submission of the invoice to the Sponsor, the Contractor will also mail or deliver by hand the original delivery receipt corresponding to the two weeks of meals being invoiced.

B. The Contractor will maintain records supported by delivery receipts, purchase orders, production records for this contract or other evidence for inspection and reference to support payments and claims.

C. The books and records of the Contractor, pertaining to this contract, will be available for a period of three years from the date the agency submits to CDE/CDSS the final claim for reimbursement for meals provided under this contract, or until the final resolution of any audits for investigation and audit by representatives of CDE/CDSS, representatives of the U.S. Department of Agriculture, the agency and the Controller General of the United States at any reasonable time and place. Records that need to be maintained must include receipts, invoices, or other evidence that meals met the SFSP and/or CACFP Meal pattern.

D. Sponsor site personnel are not authorized to make changes to delivery receipts that pertain to meals, etc. received without first contacting Contractor supervisors through the Sponsor's office. Contractor must be given the opportunity of making up any shortages or correcting discrepancies. Credit for changes made on delivery tickets by Sponsor site personnel will be made only after mutual agreement by Contractor supervisory personnel and the Sponsor's office.

E. Contractor agrees to provide the agency with a copy of current health certifications for the food service facility in which it prepares meals for the CACFP and SFSP. The Contractor shall ensure that all health and sanitation requirements of the California Uniform Retail Food Facilities

Law, Chapter 4 of the California Health and Safety Code, are met at all times.

F. Contractor will provide to DCYF document requisition support in the event of an audit by the State Department of Education, or local governing entity for reimbursable Child Nutrition Programs, including Administrative Review circumstances. DCYF shall be responsible for notifying Contractor within three (3) business days of receiving notice of an audit. DCYF shall be responsible for forwarding the written notification from the governing entity so that Contractor is positioned to best support the requisition request and tailor the support to exactly what is required. Typical document requisition in a formal audit includes support with menus, production records, recipes, labels and product formulation statements.

10. Payment Terms:

Refer to Appendix B (Calculation of Charges)

11. Inspection of Facility:

A. The Sponsor, CDE/CDSS, and the U.S. Department of Agriculture reserve the right to inspect the Contractor's preparation and transportation facilities prior to award and without notice at any time during the contract period, including the right to be present during preparation and delivery of meals. Contractor will promptly submit results of the inspections to the sponsor and the CACFP and/or SFSP representative.

B. The Contractor's facilities will be subject to periodic inspections by U.S. Department of Agriculture, state and local health departments or any other agency designated to inspect meal quality for the state. This will be accomplished in accordance with U.S. Department of Agriculture regulations.

C. The Contractor will obtain for meals, which it prepares, periodic inspections by the local health department or an independent agency to determine bacteria levels in the meals and conformance with standards set by local health authorities.

12. Insurance/Bonding:

A. Sponsor may insert their agency's insurance or bonding requirements or specifications as applicable

B. **Bid Bond** - In the event this contract is extended, the Contractor will not be required to provide a Bid Bond again, as both Contractor and Sponsor are still operating under the same approved bid.

C. **Performance Bond** - The Contractor shall provide the agency with a performance bond within 10 days after the execution of the contract if the contract is \$100,000 or more. The performance bond will be in the amount of 10% of the approved price.

Bid and performance bonds can only be obtained from surety companies contained in the Treasury Circular 570.

D. Upon receipt and acceptance of a final invoice for services rendered under Contract, Sponsor will notify the Contractor's surety company that the work under contract has been substantially completed. Once that the final invoice has been received and accepted by the Sponsor, the Contractor releases the right to request additional payment through this contract.

13. Availability of Funds:

The Sponsor will have the option of canceling this contract if the federal government withdraws funds to support the CACFP and/or SFSP. It is further understood that, in the event of cancellation of the contract, the agency will be responsible for meals that have already been assembled, delivered and/or picked up in accordance with this contract.

14. Emergencies for Meals to be Delivered:

A. In the event of unforeseen emergency circumstances, the Contractor shall immediately notify the Sponsor by telephone of the following: (1) the impossibility of providing meals or of providing them on time; (2) the circumstances precluding availability, and (3) a statement of whether or not succeeding meal availability will be affected.

B. Emergency circumstances at the site precluding utilization of meals are the concern of the Sponsor. The Sponsor will remain responsible for additional costs incurred if the emergency circumstances are because of the delivery site or site staff.

Adjustments for emergency situations affecting the Contractor's ability to prepare meals or sponsor's ability to utilize meals, for periods longer than 24 hours, will be mutually worked out between the Contractor and the Sponsor. For emergencies lasting more than 48 hours, the procedure outlined in this agreement pertaining to modifications shall be controlling.

Deviations of service due to COVID-19 or other force majeure situations will be considered upon mutual agreement.

15. Subcontracts and Assignments:

The contractor will not subcontract with any other company for the total meal, with or without milk, or for the assembly of the meal.

16. Equal Opportunity:

The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR Ch. 60).

During the performance of this contract, the contractor agrees as follows:

A. The contractor will not, unlawfully discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical disability, medical condition, marital status, age (more than 40) or sex, sexual orientation or gender identity.

The contractor will take affirmative action to ensure that the evaluation and treatment of his employees and applicants for employment are free of such discrimination. Such action will include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Contractor will comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

B. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

C. In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further state or federally funded contracts in accordance with procedures authorized in Executive Order 11246 No. of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

Appendix E
Meal Service Sites

[This appendix will contain a projected list of meal sites and their respective average daily participation (ADP) for Summer 2025 and School-Year 2025/26.]

Appendix F General Terms and Conditions

General

- The Agency and Vendor agree to operate in accordance with the Child and Adult Care Food Program (CACFP) regulations set forth in Title 7, Code of Federal Regulations (7 CFR), Part 226.
- The Agency will notify the vendor of any meal modification(s) necessary within their CNP, at least 48 hours prior to the delivery of the meal or when the agency receives notification of the required meal modification(s). [ADA Amendments Act of 2008]
- The Vendor agrees that it may not subcontract for the total meal, with or without milk, or for the assembly of the meal. 7 CFR 226.21(e).
- The Vendor agrees that it will make any and all modifications according to the ADAAA of 2008.
- The Vendor agrees to provide meals and snacks in accordance with the current CACFP Meal Pattern; 7 CFR 226.20. The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company; 7 CFR 226.6(i)(4).

7 CFR, Section 226.6(i) Items 1-11 – Standard Contract

7 CFR, Section 226.6(i)(1—11): **Standard contract.** Each State agency shall develop a standard contract in accordance with [§ 226.21](#) and provide for its use between institutions and food service management companies. **The contract shall expressly and without exception stipulate:**

1. The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, adult day care centers, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;
2. The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;
3. The food service management company shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or

- served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;
4. The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;
 5. The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;
 6. The food service management company shall operate in accordance with current Program regulations;
 7. The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;
 8. Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;
 9. Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;
 10. All meals served under the Program shall meet the requirements of [§ 226.20](#);
 11. All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with [§ 226.20](#).

Contract Management [7 CFR 226.22(l)] and [2 CFR 200.318(i)]:

- Agency shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- The Agency must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Compliance [7 CFR 226.22(l)] and 2 CFR Appendix II to Part 200:

- Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. 2 CFR Appendix II to Part 200.

- All contracts awarded in excess of \$10,000 by institutions and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).
- For Agreements over \$100,000, Vendor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Vendor shall report any violations to FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).
- Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. 2 CFR Appendix II to Part 200.
- Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. 2 CFR Appendix II to Part 200.
- Vendor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

Termination Language:

- The Agreement may be terminated without cause by the Agency upon written notice to the Vendor, thirty days (30 days) prior to the date of termination. The Agency may terminate this Agreement should the Vendor fail to perform the requirements of this Agreement at the time and in the manner herein provided. Upon termination of the Agreement prior to the end of the contract period, the Agency

will pay Vendor for all meals and snacks provided up to the effective date of termination. The Vendor shall submit all required documentation and other information.

Cost Price Index

- The contract price may be increased on an annual basis by the Yearly Percentage Change in the Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home, San Francisco Region (CPI)].
- The June 2025 CPI value will be used as a representation of the change in CPI. Such increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by the Agency. CPI Fee increases for the upcoming Contract renewal year must be submitted to the Agency. Of note, the CPI fee increases should be applied to individual meal or unit costs.
- The renegotiation of price terms under this Contract is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of both parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this contract were based, then those price terms so affected may be renegotiated by both parties. Renegotiation of price terms under such conditions must be mutual and both parties must agree on any changes in price terms. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms, to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Contract. Substantive changes of the Contract will require the Agency to rebid the Contract.

Force Majeure

- Neither party shall be liable to the other for delay in, or failure of, performance nor shall any such delay in, or failure of, performance constitute default if such delay or failure is caused by force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure may include, but is not restricted to, acts of God, the public enemy, acts of the state in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.
- Force majeure does not include any of the following occurrences:
 - Late delivery of meals caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market.
 - Late performance by a Vendor unless the delay arises out of a force majeure occurrence.
 - Inability of either the Vendor to acquire or maintain any required insurance, bonds, licenses, or permits.

- If either party is delayed at any time in the progress of work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable and no later than the following workday or the commencement thereof, and shall specify the causes of such delay. Such notice shall be delivered by hand, sent by postal mail with a certified return receipt requested, or sent electronically and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time for completion shall not extend the total contract period beyond one year.
- Any delay or failure in performance by either party caused by force majeure shall not constitute default, nor give rise to any claim for damages or loss of anticipated profits.

The Americans with Disability Act Amendments Act of 2008

The American with Disability Act (ADA) Amendments Act (ADAAA) of 2008 was signed into law in September 2008 and became effective on January 1, 2009. The detailed guidance is referenced in Public Law, Sections 110-325, ADAAA. Title II of the Americans with Disabilities Act of 1990 and the ADAAA prohibits discrimination based on disability by state and local governments. The ADA and Section 504 of the Rehabilitation Act of 1973 address issues pertaining to both physical access and program access.

Per the U.S. Department of Agriculture (USDA) Policy Memo, CACFP 14-2017: Modifications to Accommodate Disabilities in the Child and Adult Care Food Program; program operators must ensure that breakfast, lunch, snack, or milk (meals) offered through the CACFP meet the respective meal pattern requirements established in the program regulations. Federal law and USDA regulations further require program operators to make reasonable modifications to accommodate participants with disability, which includes providing special meals, at no extra charge, to participants with a disability that restricts the participant's diet.

Program operators must accommodate meal modifications within the Child Nutrition Programs (CNP). The program operator (agency) will notify the vendor, of any meal modification(s) necessary within their CNP, at least 48 hours prior to the delivery of the meal **or** when the agency receives notification of the required meal modification(s).

Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact

the agency (state or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

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

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

This institution is an equal opportunity provider.

Appendix G

Assurance of Civil Rights Compliance

The Contractor hereby agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and

lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program Applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the Vendor and Agency agree to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Contractor.