**AMENDMENT TO RENEW**

**FOOD SERVICE MANAGEMENT COMPANY CONTRACT**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Date of Base Contract: | ENTER DATE OF BASE CONTRACT | Renewal Year (circle or highlight): | 1 | 2 | 3 | 4 | 5\* | 6\* |

\*Under the COVID-19: Child Nutrition Response #71 USDA waiver, a SFA may extend their FSMC contract for one additional year until June 30,2022. Applies to FSMC contracts that expire on June 30th, 2021 (including those that were extended for a 5th renewal year during the 2020-21 school year).

This “*Amendment*” is entered into and between NAME OF SCHOOL, the School Food Authority (“*SFA*”) and NAME OF FSMC the Food Service Management Company (“*FSMC*”) and collectively referred to herein as the “*Parties*”.

The Parties now desire to amend and renew the Base Contract. In consideration of the promises contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

The term of the Base Contract shall be renewed for one (1) year beginning on July 1, YEAR and continuing until June 30, YEAR for the 2021-2022 school year unless terminated by either Party.

1. **Contract Fees:** Per the contract renewal terms stated in the Base Contract, all fee/rate increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by SFA.

**Methodologies for Fee Increases:** Consumer Price Index (CPI) % Increase for 2021-2022 is **3.8892%.** Any fee increases must be linked to the CPI. Please enter below each fee included in the agreement.

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| --- | --- | --- | --- |
| **Cost-Reimbursable (Delete for Fixed Fee)** | **Current School Year Rate** | **Renewal School Year Rate** | **Percentage Changed** |
| Flat Fee  | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ % |
| General and Administrative Expense Fee Per Meal/Meal Equivalent: | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ % |

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| **Fixed Fee (Delete for Cost Reimbursable)** | **Current School Year Rate** | **Renewal School Year Rate** | **Percentage Changed** |
| 1. **National School Lunch Program:**
 |  |  |  |
| * Reimbursable Breakfasts……………………...
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| * Reimbursable Lunches……………………......
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| * Reimbursable Snacks………………………….
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| * A la Carte Equivalents\*……………………......
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| 1. **Summer Food Service Program (SFSP):**
 |  |  |  |
| * Reimbursable Breakfasts……………………...
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| * Reimbursable Lunches……………………......
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| * Reimbursable Suppers…………………….........
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |
| * Reimbursable Snacks………………………….
 | $\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_ % |

*Percentage Changed: Percentage changed must not exceed the allowable CPI increase.*

1. **Meal Equivalent Rate (Delete if not applicable)**: The meal equivalency rate may be updated annually if both parties agree. The new meal equivalency rate as provided by CDE is as follows. Please indicate if the updated meal equivalency rate will be used.

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| Lunch Meal Equivalency Rate: |
| FY 2020-21 Federal Free Rate of Reimbursement + .07 Certification | $3.5800 |
| FY 2020-21 Value of USDA Entitlement USDA Foods: | $0.3700 |
| **Total Meal Equivalent Rate For SY21-212** | **$3.9500** |
| **Please check one option:** |
| The Base Year Contract Meal Equivalency Rate will be used |  |
| The SY20-21 Meal Equivalency Rate will be used |  |

1. **USDA Foods:** Under the provisions stated in the Base Contract, the FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA’s meal service in the school year or fiscal year (including both entitlement and bonus foods), and include the value of USDA Foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a). Furthermore, the FSMC shall be responsible for activities related to USDA Foods in accordance with 7 CFR 250.50(d), and must assure that such activities are performed in accordance with the applicable requirements in 7 CFR part 250. In support of terms outlined in the USDA Foods section of the Base Contract, Parties shall provide the following:
2. Verification – Receipt of USDA Foods: SFA shall attach a copy of the SFA’s Year-end reconciliation verifying correct and proper credit has been received for the full value of all USDA Foods received by the selected FSMC during the fiscal year. The SFA reserves the right to conduct USDA donated food credit audits throughout the year to ensure compliance with federal regulations 7 CFR 210 and 7 CFR 250.
3. Verification – Usage of USDA Foods: Renewals of the Base Contract is contingent upon adequate usage of USDA Foods.

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| --- | --- | --- |
| **USDA Foods Entitlement Utilization:** CURRENT SCHOOL YEAR | **Estimated:** **Current SY** | **Actual:** **Prior SY** |
| USDA Foods Entitlement Amount awarded for current SY: | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_ |
| Amount of USDA Foods credited to the SFA by the FSMC: | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_ |
| USDA Foods Entitlement Utilization: | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_ |
| USDA Foods Entitlement Utilization Percentage: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ % | \_\_\_\_\_\_\_\_\_\_\_% |

1. **Additional Renewal Terms** **(Delete if not applicable)**: List any additional changes to the contract, including but not limited to: changes to the guarantee amount or terms, participating sites, and program participation. All changes must be approved by CDE and may not be a material change.

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1. **Budget:** SFA and FSMC shall provide draft budget for the upcoming school year.

***COST REIMBURSABLE* - PROJECTED FOOD SERVICE BUDGET School Year 21-22 (Delete for Fixed Fee)**

|  |
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| **REVENUES** |
| **Cash Sales**: |  |
| Student Breakfast Sales | $ |
| Student Lunch Sales | $ |
| Student Snack Sales | $ |
| Student a la carte Sales | $ |
| Adult Sales | $ |
| Catering Sales | $ |
| Interest Income | $ |
| Concession Sales | $ |
| Vended Meal Sales | $ |
| Vending Machine Sales | $ |
| *Total Cash* | $ |
| **State and Federal Reimbursement/Funding** |  |
| Lunch | $ |
| Breakfast | $ |
| Snacks | $ |
| SFSP | $ |
| State Matching Fund | $ |
| USDA Foods Received | $ |
| Other Funding | $ |
| *Total Reimbursements* | $ |
| *All Cash Sales + All Reimbursements*= **Total Revenues** | $ |
| **EXPENSES** |
| USDA Foods Used *(Contact CDHS for annual SFA usage amount)* |  |
| USDA Foods Delivery |  |
| USDA Foods Processing |  |
| **Cost Reimbursable Contracts:** |  |
| Gross Food Costs | $ |
| Food Delivery Costs | $ |
| **Total Food Costs** | $ |
| **Labor Costs** |
| **FSMC Salaried Employees:** | # FTEs | $ PTEs |
| Base Gross Salary | $ |
| Educational Assistance | $ |
| Incentive Payments | $ |
| Bonus | $ |
| Merit Increase | $ |
| Retirement / IRA | $ |
| 401K, 403(b)(7) | $ |
| Fringe Benefits | $ |
| Payroll Taxes | $ |
| **SFA / FSMC Hourly Staff** | $ |
| Gross Salaries | $ |
| Fringe Benefits | $ |
| Payroll Taxes | $ |
| **Other Payroll Costs** |
| Worker’s Comp. | $ |
| Other | $ |
| **Total Labor Costs** | $ |

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| **FSMC Fees** |
| Administrative Fees Cost | $ |
| Management Fee Costs | $ |
| **Total Fees** | $ |
| **FSMC Direct Costs – Subcategory Examples:** |
| Paper & Disposable Goods | $ |
| Replacements / Small wares | $ |
| Contracted Labor – Specify | $ |
| Auto Expenses | $ |
| Insurance Expense | $ |
| Telephone | $ |
| Office Supplies | $ |
| Postage | $ |
| Bank Deposit Services | $ |
| Uniforms & Laundry | $ |
| Other Delivery & Freight/Non-Food | $ |
| Advertising, Promotions & Menus | $ |
| Marketing/Franchise & Décor | $ |
| Equipment Repair | $ |
| Licenses | $ |
| Employee Travel | $ |
| Miscellaneous - Specify | $ |
| *Total FSMC Direct Costs* | $ |
| *SFA Direct Costs* | $ |
| **Total Direct Costs** | $ |
| **FSMC Indirect Costs** – Subcategory examples include: |
| FSMC Charges | $ |
| Technology Expense | $ |
| a) Technology Allocated Charge | $ |
| b) Other Technology Charge | $ |
| Insurance Allocated Charge (Worker’s Comp. Excluded) | $ |
| Other Allocated Charges | $ |
| Franchise Charges | $ |
| Trademark Charges | $ |
| Other Indirect Cost Categories | $ |
| **Total FSMC Indirect Costs** | $ |
| **Total Discounts, Rebates, Applicable Credits, allowances or incentives from FSMC Suppliers credited to SFA** | $ |
| **Total Expenses** | $ |
| Total Revenues – Total Expenses = **Surplus / Subsidy** | $ |
| **FSMC Guaranty** |  |
| **SFA Employee Responsible for submission of this budget data:** |
|  | **Phone:** |
| **FSMC Employee Responsible for submission of this budget data** |
| **Name** | **Phone:** |

***FIXED-FEE PER MEAL RATE -*PROJECTED FOOD SERVICE BUDGET School Year 21-22 (Delete for Cost-Reimbursable)**

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| **Revenues** |
| **Cash Sales**: |  |
| Student Breakfast Sales | $ |
| Student Lunch Sales | $ |
| Student Snack Sales | $ |
| Student a la carte Sales | $ |
| Adult Sales | $ |
| Catering Sales | $ |
| Interest Income | $ |
| Concession Sales | $ |
| Vended Meal Sales | $ |
| Vending Machine Sales | $ |
| *Total Cash* | $ |
| **State and Federal Reimbursement/Funding** |  |
| Lunch | $ |
| Breakfast | $ |
| Snacks | $ |
| SFSP | $ |
| State Matching Fund | $ |
| USDA Foods Received | $ |
| Other Funding | $ |
| *Total Reimbursements* | $ |
| *All Cash Sales + All Reimbursements*= **Total Revenues** | $ |
| **Expenses** |
| Reimbursable Breakfast Meal Rate Fee | $ |
| Reimbursable Lunch Meal Rate Fee | $ |
| Management Fee | $ |
| A la Carte Equivalent Meal Rate Fee | $ |
| A la Carte Management Meal Rate Fee | $ |
| SFA Direct Expense | $ |
| Other FSMC Charges outside of Rate | $ |
| **Total Expenses** | $ |
| **USDA Foods** |  |
| USDA Foods Used *(Contact CDHS for annual SFA usage amount)* | $ |
| USDA Foods Delivery | $ |
| USDA Foods Processing | $ |
| Total Revenues – Total Expenses = **Surplus / Subsidy** | $ |
| **FSMC Guaranty Type and amount (if applicable)** | $ |
| **SFA Employee Responsible for submission of this budget data:** |
| **Name** | **Phone** |
| **FSMC Employee Responsible for submission of this budget data** |
| **Name** | **Phone:** |

1. **Execution of Renewal:** This Amendment is effective EFFECTIVE DATE and thereafter, unless otherwise amended. All other terms and conditions contained in the Base Contract shall remain unchanged and in full force and effect. **This Amendment is not effective until it is approved, in writing, by CDE**.

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| **SFA** | **FSMC** |
| Name of Authorized Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name of Authorized Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature of Authorized Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature of Authorized Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Note:** A copy of this document, after executed by both Parties, along with a signed list of Non-delegable Responsibilities must be provided to:

Colorado Department of Education

School Nutrition Unit

NutritionProcurement@cde.state.co.us

(303) 866-6661

**Advice of Counsel**: Each Party acknowledge that, in executing this agreement, such Party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this agreement. The Colorado Department of Education (CDE) is not a party to any contractual relationship between a SFA and a vendor. CDE is not obligated, liable, or responsible for any action or inaction taken by a SFA or vendor based on this prototype contract. CDE’s review of the contract is limited to assuring compliance with federal and state procurement requirements. The CDE does not review or judge the fairness, advisability, efficiency or fiscal implications of the contract.

**SCHOOL FOOD AUTHORITY NON-DELEGABLE RESPONSIBILTIES**

The SFA is legally responsible for the conduct of the food service program, and must supervise and monitor the food service operations to ensure compliance with the rules and regulations of CDE/OSN and the USDA regarding the school food service program.

The SFA and the Food Service Management Company (FSMC) acknowledge that the SFA is responsible for completing the following duties and that these cannot be delegated to the FSMC:

1. **On-site inspections**: 7 CFR 210.16(a)(2)(3).
	1. Monitor the food service operation through periodic visits to ensure compliance with the approved FSMC contract.
	2. Conduct and document on-site reviews of the lunch counting /claiming system by school
	3. Follow-up on any lunch counts which show counting discrepancies
2. **Control and overall financial responsibility** of the school food service account. 7 CFR 210.19(a)(2)
3. **Advisory board:** establish and include parents, staff and students to assist in menu planning.. The FSMC must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the SFA. 7 CFR 210.16(b)(1), 7 CFR210.16(a)(8)
4. **Health certification**: 7 CFR 210.16(a)(7).must be maintained to assure that all state and local regulations are met by the FSMC preparing or serving meals at the SFA facilities.
5. **Establish all prices**: 7 CFR 210.16(a)(4).for food items served under the nonprofit school food service account (e.g., reimbursable meals, a la carte , and adult meals).
6. **Retain signature authority** on: 7 CFR 210.9 (a)(b), 210.16(a)(5).
	1. Application/agreement to participate in the Child Nutrition Programs including
	2. Free and reduced price policy statement; and
	3. On-line claim system.
	4. Contractual agreements of the school nutrition program i.e., vending meals to other SFAs, etc. and any commodity processing contracts CFR 210.21, 7CFR210.19(a)(1); 2 CFR 200 and 400; 7 CFR 250.15(a)
	5. Resolution of all program review and audit findings. 7 CFR 210.9(b)(17) and 210.18(k)(1)(2)
7. **Submit monthly claim for reimbursement** 7 CFR 210.8(a); 7 CFR 210.16(a)(5).
	1. CDE-OSN approves only SFA personnel access to the system which also represents secure signature authority for applications and claims.
	2. Review to ensure accuracy of lunch counts prior to the claim submission.
	3. Edit check worksheets that compare daily lunch counts by eligibility category. Free and reduced-price meals may not be claimed in excess of the number of students approved for such benefits.
8. **Free and Reduced Price Meal Process** 7 CFR 245.6
	1. Develop, distribute and collect the parent letter and application for free and reduced price meals and free milk
	2. Determination and verification of applications for free/reduced price meals or free milk
	3. Conduct any hearings related to such determinations.
9. **USDA donated foods** 7 CFR 210.9(b)(15) (formerly Commodities)
	1. Monitor that the maximum amount are received and used by the FSMC in the SFA food service.
	2. Monitor that the FSMC credits SFA at least annually for all USDA Donated foods.
10. **A la carte food service**: 7 CFR 210.16(a)

The SFA must also offer free, reduced price and full price reimbursable meals to all eligible children in order to operate an ala carte food service.

I acknowledge that these responsibilities cannot be delegated to the FSMC and must remain the sole responsibility of the SFA.

|  |  |  |
| --- | --- | --- |
| Signature FSMC Representative | Title | Date |
| Signature SFA Representative | Title | Date |