



MAGNOLIA PUBLIC SCHOOLS

Board Of Directors

Board Agenda Item #	II F
Date:	August 11, 2016
To:	Magnolia Board of Directors
From:	Caprice Young, Ed.D. CEO & Superintendent
Staff Lead:	Kelly Hourigan, Chief Operations Officer
RE:	RFP for meal program at MSA-SA

Proposed Board Recommendation

I move that the board approve the selected vendor, Better4You Meals to provide meal services at Magnolia Science Academy Santa Ana for the 2016-2017 school year.

Background

MPS is committed to providing healthy breakfasts and lunches to its students and meeting all standards and regulations relating to the National School Lunch and Breakfast programs, as well as California health and school rules and regulations.

MPS posted the RFP on our schools website and emailed to vendors to assure a fair bidding process.

The selection of the winning proposal will be based upon the following criteria:

Points	Criteria	Minimum Standard	Evidence/Documents Required to Demonstrate	Total
12	Menu	Submit sample 21-day menu for all meals proposed	Menus will be graded based on appeal, variety and food quality	
12	Service Capability	Vendor must have plan for on-time delivery and program implementation	Detailed action plan included in proposal with meal ordering, back-up plans and procedures	
14	K-12 Experience	A minimum of five years in K-12	Documentation of experience as	_____



MAGNOLIA PUBLIC SCHOOLS

13950 Milton Ave. 200B Westminster, CA 92683

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	in National School Lunch Program	food service management - specifically National School Lunch and Breakfast Program	outlined in company history _____	
30	References	Vendor must provide at least three local customer references	Documentation of all K-12 organizations vendor has had contracts with in the past five years with contact information	
32	Cost			
100				

Contract Period: August 1, 2016 through June 30, 2017, with the option to renew up to four (4) one-year contracts.

Budget Implications: The estimated value of this contract is already included in the schools budget and is aligned with the school lunch funding program.

Name of Staff Originator:

Kelly Hourigan, Chief Operations Officer

Attachments:

- RFP



Magnolia Public Schools
REQUEST FOR PROPOSAL
2016-2017 VENDED MEALS

Magnolia Science Academy – SA (MSA-SA)

DUE DATE: July 27, 2016
4:00pm

250 East 1st Street, Ste. 1500, Los Angeles, CA 90012

Magnolia Science Academy (MSA) participates in the National School Lunch Program (NSLP) and School Breakfast Program (NSBP) for students, and is requesting proposals from qualified food vendors for compliant meals during the 2016-17 school year.

MSA-Santa Ana will be relocating to a brand new campus at **2804 W. 1st Street, Santa Ana, CA 92703**. We are projecting 660 students for the 2016-17 school year in grades Tk-12. Full capacity will be 1,025 students.

Questions due: July 20, 2016
Answers provided: July 22, 2016
SUBMISSION DUE DATE: July 27, 2016 @ 4:00pm

SCOPE OF WORK

MSA is seeking an organization that is familiar with the following programs:

- The National School Lunch Program (NSLP)
- School Breakfast Program (SBP)

The ideal food vendor will have the following qualifications:

- Provide fresh, nutritious, tasty, and visually appealing meals.
- Provide fresh fruit and/or vegetable with every meal.
- Provide lowfat or nonfat milk with each meal.
- Provide appropriate utensils and napkins as needed for the meals.
- Provide consistent quality control.
- Provide nutrition advocacy.
- Provide responsible and responsive account manager.
- Has previous experience working with multiple school sites.
- NSLP compliant meals (all meals must be eligible for state and federal reimbursement).
- NSLP menu recordkeeping and planning necessary to receive reimbursements.
- Be familiar with State and Federal regulations pertaining to operations in a school setting.
- Comply with all state, county and city health and sanitation requirements. MSA reserves the right to inspect Vendor's facilities at any time during the contract period.
- Has valid certifications and insurance documents.

Food qualifications:

- Provide fresh vegetable with every lunch and breakfast meal.
- Provide fresh fruit with every breakfast and lunch meal. No canned/frozen fruits.

- No hydrogenated oils.
- No artificial trans fats.
- No more than 30% of calories from total fat, and no more than 10% of calories from saturated fats.
- No deep fried foods.
- No overly processed foods.
- No high fructose corn syrup.
- No artificial preservatives, colors, flavors or sweeteners.
- No MSG.
- Foods with little or no added sugar.
- Meats shall be free of nitrates and nitrites.
- No animal by-products.
- No mechanically separated meats (aka “pink slime”).
- Provide lowfat or nonfat milk with each breakfast, lunch and supper meal. Milk shall be rBST-free.
- No BHA & BHT.
- Whole grains must be offered.
- Provide a daily vegetarian option.
- Use organic and locally produced ingredients whenever possible.

VENDOR RESPONSIBILITIES

The Vendor shall be responsible for the following:

- Provide or assist MSA in obtaining the necessary equipment to hold, heat and serve meals and milk (MSA does not have cooking facilities)
- Provide the necessary utensils and napkins in sufficient quantity for the number of meals ordered.
- Deliver meals to the school at times specified by MSA.
- Condition or care of meals until they are delivered to the school.
- Provide to MSA no later than one (1) week prior to the end of each month, a monthly menu covering the meals to be served for the following month.
- Provide MSA with sack lunches for field trips when requested. All meals for field trips must meet the appropriate meal pattern requirements.
- Maintain the proper temperature of the breakfast, lunch, snack and supper components until they are delivered.

- Maintain all necessary records on the nutritional components and quantities of the meals served at MSA and make said records available for inspection by State and Federal authorities upon request.

SCHOOL RESPONSIBILITIES

MSA will be responsible for the following:

- Weekly ordering of the number of meals needed for each day of the following week.
- Condition and care of meals once accepted upon delivery.
- Service of meals to students.
- Maintenance of the premises, equipment and facilities where meals will be served, and will adhere to the highest standards of cleanliness and sanitary practices to ensure compliance with state and local health and sanitation requirements related to the food service program.
- Payment of invoices to the vendor using net 30 terms.
 - No payment will be made for meals that are spoiled or unwholesome at time of service, do not meet the specifications, or do not otherwise meet the requirement of the agreement. However, no deduction will be made unless MSA provides written notification of the meal service for which the deduction is to be made, specifying the number of meals for which we intend to deduct payment and setting forth the reasons for the deduction. MSA will provide such notice no later than three (3) business days after the date the meal was served.

PROPOSAL SPECIFICATIONS

Contract Period:

The contract period will be August 1, 2016 through June 30, 2017, with the option to renew up to four (4) one-year contracts.

Proposals must include:

- Description of services including but not limited to the following:
 - Menu development rationale
 - Placing orders
 - Equipment needed (no current equipment)
 - Nutrition advocacy
 - Duration and extent of experience in the operation of school meal services
 - Additional services
- Cost per meal (breakfast and lunch)
- Sample 21-day cycle menu for breakfast and lunch, including nutritional information showing compliance with federal and state meal program requirements.
- A copy of current health certifications for the food service facility in which it prepares meals for the NSLP.
- Proof of liability insurance and proposed indemnity language
- Materials/supplies provided
- 3 professional references from schools currently operating the National School Lunch Program

Please include the following certifications:

- Certificate of Independent Price Determination
- Certification Regarding Debarment, Suspension, and Ineligibility
- Certification Regarding Lobbying
- Disclosure of Lobbying Activities

BID CRITERIA

Points	Criteria	Minimum Standard	Evidence/Documents Required to Demonstrate	Total
12	Menu	Submit sample 21-day menu for all meals proposed	Menus will be graded based on appeal, variety and food quality	
12	Service Capability	Vendor must have plan for on-time delivery and program implementation	Detailed action plan included in proposal with meal ordering, back-up plans and procedures	
14	K-12 Experience in National School Lunch Program	A minimum of five years in K-12 food service management -specifically National School Lunch and Breakfast Program	Documentation of experience as outlined in company history	
30	References	Vendor must provide at least three local customer references	Documentation of all K-12 organizations vendor has had contracts with in the past five years with contact information	
32	Cost			
100				

MSA reserves the right to reject all proposals.

Interested vendors must submit 2 copies of their response to this Request for Proposal via mail or in person no later than **July 27, 2016 by 4:00pm**. Late proposals will not be considered under any circumstances.

Via Mail or in Person:

250 East 1st Street, Ste. 1500, Los Angeles, CA 90012

Vendors are requested to submit any questions regarding the RFP in writing to Emily Chatelain, echatelain@sfgroup.org no later than July 20, 2016 by end of day. Once proposals are reviewed, food vendors may be contacted for a follow up interview and/or oral presentation.

Via Email:

Vendors are requested to submit an electronic copy to eracar@magnoliapublicschools.org **AFTER** the 4:00pm deadline.

Submittals must be valid for 90 days following the submission deadline.

School Information

School Name and Address	# Students Enrolled by Grade	% F/R Students	Estimated # Serving Days	Meal Times
Magnolia Science Academy 2804 W. 1 st Street, Santa Ana, CA 92703	K-5: 325 6-8: 200 9-12: 125	50%	180	B: 7:45am L: 11:40-1:00pm

Daily Average Meal Participation

	Breakfast	Lunch
K-5	230	230
6-8	140	140
9-12	90	90

Total Annual Meals/Fee Proposal

Meal Type	Annual	Fee per Meal	Annual Cost
Breakfast	82,800	\$	\$
Lunch	82,800	\$	\$

Fixed Price Per Meal Shall Include:

- Utensils
- Preparation and delivery
- Milk (2 types)
- Labor for meal preparation and delivery
- Equipment needed to hold and serve meals properly

Vended Meals Contract

for the National School Lunch and/or School Breakfast Program(s)

This Agreement ("Agreement") is entered into by and between _____ herein after referred to as the School Food Authority (SFA), and _____, herein after referred to as the Vendor. The effective date of this Agreement is _____.

This Agreement sets forth the terms and conditions upon which the SFA retains the Vendor to provide meals for the SFA's nonprofit and a la carte food service program, in accordance with the Scope of Work as shown in Exhibit _____. Furthermore, this Agreement sets forth the terms and conditions upon which the SFA will purchase meals from the Vendor and the Vendor will provide meals for the SFA's nonprofit food service program. The SFA and Vendor agree to abide by the rules and regulations governing the Child Nutrition Programs, in accordance with federal regulations including policy and instructions issued by the United States Department of Agriculture (USDA). The applicable regulations are 7 CFR 210 (National School Lunch Program), 7 CFR 215 (Special Milk Program), 7 CFR 220 (School Breakfast Program), 7 CFR 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk), 7 CFR 250 (Food Distribution Program), 7 CFR 225 (Summer Food Service Program for Children), and 7 CFR 3052 (Audit Requirements).

Schedule *List days of the week and times meals are required for delivery or pick up.*

SFA Contact Information		Vendor Contact Information	
Contact Person <i>First & Last Name</i>	Phone <i>Area Code/No.</i>	Contact Person <i>First & Last Name</i>	Phone <i>Area Code/No.</i>
Email Address	Fax <i>Area Code/No.</i>	Email Address	Fax <i>Area Code/No.</i>
Address <i>Street, City, State, Zip</i>		Address <i>Street, City, State, Zip</i>	

The fixed price per meal listed below is agreed upon by both parties as if no USDA Foods are used:

Breakfast	Adult Meal	Carton of Milk
Price Per Meal <input type="checkbox"/> Includes Milk <input type="checkbox"/> <i>Will Not Include Milk</i>	Price Per Meal <input type="checkbox"/> Includes Milk <input type="checkbox"/> <i>Will Not Include Milk</i>	Price Per Carton
Lunch Price Per Meal <input type="checkbox"/> Includes Milk <input type="checkbox"/> <i>Will Not Include Milk</i>		

A. Agreement Period

The initial agreement period shall be 8/1/2016 to 6/30/2017. Both parties agree to enter into this Agreement for one-year period with the option to renew the Agreement for up to four (4) additional one-year periods by mutual agreement of the SFA and Vendor. Renewal shall be based on customer satisfaction with products, service, and price.

Annual Escalator Clause; changes in the per-meal price may be considered by the SFA only at the time of renewal. Any proposed per-meal price changes must be accompanied by documentation supporting such increase. The SFA reserves the right to accept or reject any proposed price changes, in the best interest of the SFA. If the proposed per-meal price changes are accepted, they shall become effective on the first day of the contract renewal period.

Conditions for an annual escalator clause; the fixed per-meal price may be subject to an annual escalator as stipulated in this Agreement. Adjustment factors may include changes in third-party price indices from the Consumer Price Index (CPI); U.S. Bureau of Labor Statistics, Division of Consumer Prices and Price Indexes, PSB Suite 3130, 2 Massachusetts Avenue, NE Washington, DC 20212-0001; website at <http://www.bls.gov/cpi>. SFA will consider the lesser of the following two options either—
1) the average CPI (Food Away From Home) for the previous year or 2) three percent (3%).

B. The Vendor Agrees to

1. Invoice SFA for unitized meals in accordance with the number of meals requested.
2. Provide the SFA, for approval, a proposed cycle menu for the operational period, at least **10** operating days prior to the beginning of the period to which the menu applies. Any changes to the menu made after SFA approval must be approved by the SFA, and documented on the menu records. Meals must be planned, prepared, and served (if applicable) to meet the USDA meal pattern requirements and nutritional standards as outlined in Attachment C, Minimum Food Specifications.
3. Maintain full and accurate records that document:
 - a. the menus were provided to the SFA during the term of this Agreement,
 - b. a listing of all components of each meal,
 - c. an itemization of the quantities of each component used to prepare said meal, and
 - d. providing the SFA with daily production/transport sheets indicating how menu items contribute to meal pattern requirements and supporting documentation for contribution.

The Vendor agrees to provide meal preparation documentation by using yield factors for each food item as listed in the *USDA Food Buying Guide* or child nutrition labels or manufacturers' product information statement when calculating and recording the quantity of food prepared for each meal.

4. Maintain cost records such as invoices, receipts, and/or other documentation that exhibit the purchase or otherwise availability to the Vendor of the meal components and quantities itemized in the meal preparation records.
5. Maintain, on a daily basis, an accurate count of the number of meals, by meal type, prepared for and **delivered to** the SFA. Meal count documentation must include the number of meals requested by the SFA.
6. Allow the SFA to increase or decrease the number of meal orders, as needed, when the request is made within **24 hours** of the scheduled delivery time.
7. Present to the SFA an invoice accompanied by reports which itemizes the previous month's meals delivered to the SFA no later than the **10th** day of each month. The Vendor agrees to forfeit payment for meals which are not ready within one (1) hour of the agreed upon time for meals to be **delivered to** the SFA, are spoiled, or unwholesome at the time of **delivery to** the SFA, or do not otherwise meet the meal requirements contained in this Agreement. The Vendor shall pay the SFA the full amount of any meal overclaims which are attributable to the Vendor's negligence, including those overclaims based on reviews or audit findings that occurred during the effective dates of original and renewal of the awarded contracts. In cases of nonperformance or noncompliance on the part of the Vendor, the Vendor shall pay the SFA for any excess costs the SFA incurs by obtaining meals from another source.
8. Provide the SFA with a copy of all permits and licenses required by California law for the food service facility in which it prepares meals for the National School Lunch Program/School Breakfast Program (NSLP/SBP). The Vendor shall ensure that all health and sanitation requirements of the California Retail Food Code are met at all times.

9. Operate in accordance with current NSLP/SBP regulations. The Vendor agrees to comply with all other USDA regulations regarding food service vendors including those specified for commercial food service if applicable.
10. Not subcontract for the total meal, with or without milk, or for the assembly of the meal.
11. Be paid by the SFA for all meals **delivered to** the SFA in accordance with this Agreement and NSLP/SBP meal pattern requirements. Neither the California Department of Education (CDE) nor USDA will assume any liability for payment of differences between the number of meals prepared by Vendor for Error! Reference source not found.**delivery to** the SFA and the number of meals served by the SFA that are not eligible for reimbursement.
12. Make substitutions in the food components of the meal pattern for students with disabilities when the disability is certified by a signed statement from a licensed physician. For nondisabled students who are unable to consume regular meals because of medical or other special dietary need substitutions shall be made on a case-by-case basis when supported by a signed statement from a medical doctor or recognized medical authority, or in the case of a request for a milk substitution, by a medical authority or a parent. There will be no additional charge to the student for such substitutions.
13. Provide access, with or without notice, to all of the Vendor's facilities for purposes of inspection and audit.

C. The SFA Agrees to:

1. Request by email no later than **3 days** an accurate number of meals to be delivered the SFA each day. Notify the Vendor of necessary increases/decreases in the number of meals ordered within **24** hours of the scheduled delivery time. Errors in meal orders shall be the responsibility of the SFA making the error.
2. Ensure that a SFA representative is available at each site, at the specified time on each specified day to receive, inspect, and sign for the requested number of meals. This individual will verify the temperature, quality, and quantity of each meal delivered to the SFA. The SFA assures the Vendor that this individual will be trained and knowledgeable in the recordkeeping and meal requirements of the NSLP/SBP, and with local health and safety codes. Provide personnel to serve meals, clean the serving and eating areas, and assemble transport carts and auxiliary items for pick up by the Vendor (if applicable) no later than **each day**.
3. Notify the Vendor within **5** days of receipt of the next month's proposed cycle menu of any changes, additions, or deletions.
4. Provide the Vendor with information on how to access or a copy of the federal NSLP/SBP meal pattern requirements, the USDA Food Buying Guide; and all other technical assistance materials pertaining to the food service requirements of the NSLP/SBP. The SFA will, within 24 hours of receipt from CDE, advise the Vendor of any changes in the food service requirements.
5. Pay the Vendor by the **30th** day of each month the full amount as presented on the monthly itemized invoice. Notify the Vendor within 48 hours of receipt of any discrepancy in the invoice. Pay the Vendor for all meals **delivered to** SFA in accordance with the agreement. Neither CDE nor USDA assumes any liability for payment of the difference between the number of meals prepared, delivered, and the number of meals served by the SFA that are ineligible for reimbursement.
6. Retain control of the quality, extent, and general nature of the food service operation; and establish all program and non-program meal and a la carte prices.
7. Be responsible for loss or damage to equipment owned by the Vendor while in the possession of the SFA.
8. Submit a signed copy of the annual renewal amendment to the CDE prior to approval of the SFA online contract for participation in NSLP.

D. USDA FOODS

If SFA desires to participate in the USDA Foods Program and the Vendor agrees to use USDA Foods in accordance with federal and state regulations, then both the SFA and Vendor will need to sign the "Addendum to the Vended Meals Agreement for Participation in USDA Foods Program" Attachment H.

E. Termination

1. **Mutual Agreement Termination:** With mutual agreement of both parties to this Agreement, upon receipt and acceptance not less than sixty (60) days of written notice, this Agreement may be terminated on an agreed upon date before the end of the agreement period without penalty to either party.

2. **Non-Performance of Agreement and Termination:**
 - a. Except as may be otherwise provided by this Agreement, this Agreement may be terminated in whole or in part by either party in the event of failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party.
 - b. The SFA may terminate this Agreement immediately upon written notice to Vendor if the Vendor becomes the subject of a proceeding under state or federal law for the relief of debtors or if an assignment is made for the benefit of creditors, or if Vendor loses its license or other ability to provide the required products and services, or if Vendor takes any action that violates any applicable laws (including, but not limited to, state and federal law governing the NSLP/SBP).
 - c. Any agreement termination resulting from any cause other than a Force Majeure event or termination for nonappropriations will be deemed valid reason for not considering any future proposal or bid from the defaulting Vendor.
3. **Termination for Convenience:** The SFA may terminate this agreement prior to the expiration of the term, without cause and without penalty, upon sixty (60) days written notice to the Vendor.
4. **Final Payments:** Upon any termination of this Agreement, the SFA will pay for all meals received up to the effective date of termination. The Vendor shall submit all required reports and other information.

F. Standard Terms and Conditions

1. **Terms and Conditions:** Vendor must be fully acquainted with terms and conditions relating to the performance of this Agreement. Failure or omission of Vendor to be familiar with existing conditions shall in no way relieve the Vendor of obligation with respect to this agreement.
2. **Not Debarred, Suspended, Proposed for Debarment, Declared Ineligible, or Voluntarily Excluded:** Vendor certifies that neither the company nor any of its principals has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or <https://www.epls.gov/> agency. Vendor should consult Executive Orders 12549 and 12689. For additional information, Vendor should check <https://www.epls.gov/>, a public service site by General Services Administration (GSA) for the purpose of efficiently and conveniently disseminating information on parties that are excluded from receiving federal contracts, certain subcontracts, and certain federal financial and nonfinancial assistance and benefit. The Suspension and Debarment Certification, Attachment E, must be signed by an authorized person and attached to this Agreement.
3. **State and Federally Required Contractual Provisions:** Vendor must have obtained, and will continue to maintain during the entire term of this Agreement, all permits, approvals or licenses necessary for lawful performance of its obligations under this Agreement. In addition, Vendor is responsible to abide by all applicable federal and state laws and policies of CDE and state and local boards of education, as applicable, when providing services under this Agreement.
4. **Equal Employment Opportunity:** Vendor shall comply with E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
5. **Labor and Civil Rights Laws:** Vendor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with Vendor's performance of work under this Agreement, Vendor agrees not to discriminate against any employee(s) or applicant(s) for employment because of sex, age, race, color, religion, creed, sexual orientation, gender identity, national origin, or disability. Vendor shall also comply with applicable Civil Rights laws as amended including but not limited to Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.
6. **Clean Air Act and Energy Policy and Conservation Act:** Vendor shall comply with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), as applicable, as well as the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871, and any related state energy laws, as applicable. Vendor shall report all violations to the SFA and to the relevant federal or state agency as appropriate.
7. **Breach of this Agreement and Remedies:** If Vendor fails to comply with any of the terms and conditions of this Agreement; the SFA has the option to send Vendor a ten (10) business day Notice to Cure the defect or

breach. During the ten-day Notice to Cure, the parties may meet and confer to discuss the resolution of the defect or breach.

If there is not a satisfactory resolution at the end of the ten-day Notice to Cure, the SFA has the option to immediately cancel all or any part of the order. Such cancellation shall not be deemed a waiver by SFA of any rights or remedies for any breach by Vendor. SFA expressly reserves all rights and remedies provided by statute or common law in the event of such breach. Without limiting the foregoing, the SFA may, at its option, require Vendor to repair or replace, at Vendor's expense, any products or goods, which caused the breach.

The remedies of the SFA is cumulative, and additional to any/or other further remedies provided by law. No waiver of any breach shall constitute a waiver of any other breach.

8. **Indemnify and Hold Harmless:** Vendor shall indemnify, defend, and hold harmless the SFA, its directors, officers, employees, and agents from and against and all liability, damages, losses and expenses (including reasonable attorneys' fees and costs) which arise out of Vendor's negligence, breach or other performance of the Agreement, or violation of any law or right of a third party, or that of Vendors' employees, subcontractors, or agents. Vendor will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend, and hold harmless the SFA and its directors, officers, employees, and agents from and against any claims for infringement of any copyrights, patents, or other infringements of intellectual property rights related to its activities under this Agreement.
 - a. Vendor agrees to notify the SFA by certified mail return receipt request, or by overnight courier immediately upon knowledge of any claim, suit, action, or proceedings.
 - b. Such indemnification obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligations to indemnify, which would otherwise exist as to any party or person.
9. **Force Majeure:** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
10. **Waiver:** No claims or rights arising out of a breach of this Agreement can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by the aggrieved party.
11. **Taxes:** The SFA has tax-exempt status.
12. **Buy American:** Vendor will comply with the Buy American requirement, which dictates that SFAs participating in the federal school meal programs are required to purchase domestic commodities and products for SFA meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially (at least 51 percent) using agricultural commodities that are produced in the U.S. (7CFR210.21, 220.16).
13. **Food Laws:** Vendor shall operate in accordance with all applicable laws, ordinances, regulations and rules of federal, state, and local authorities, including but not necessarily restricted to a Hazard Analysis and Critical Control Point (HACCP) plan. SFA may inspect Vendor's facilities and vehicles.
14. **Food Recall:** Vendor shall comply with all federal, state, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplace. Vendor shall have a process in place to effectively respond to a food recall; the process must include accurate and timely communications to the SFA and assurance that unsafe products are identified and removed from SFA sites in an expedient, effective, and efficient manner. Vendor shall maintain all paperwork required for immediate and proper notification of recalls for full and split cases.
15. **Biosecurity:** Vendor must have a written policy regarding biosecurity and the food supply, in accordance with the Bioterrorism Act 2002 under the U.S. Department of Health and Human Services, Food and Drug Administration and under the USDA, Food Safety and Inspection Service.
16. **Lobbying Certification:** The Vendor must sign the Lobbying Certification, Attachment F, which was attached as an addendum to this Agreement and which is incorporated and made a part of this Agreement. If applicable, the Vendor has also completed and submitted Standard Form-LLL, Disclosure of Lobbying Activities (Attachment G), or will complete and submit as required in accordance with its instructions included in Attachment G.

17. **Independent Price Determination Certification:** The Vendor must sign Independent Price Determination Certificate, Attachment D, which was attached as an addendum to the Agreement and which is incorporated herein by reference and made a part of this Agreement.
18. The Vendor shall comply with all other pertinent state and federal laws.
19. **Records:** Vendor and SFA shall retain all required records for a period of three (3) years after SFA makes final payment and all other pending matters are closed included any ongoing audits or the end of the fiscal year to which they pertain, whichever is greater. Upon request, make all accounts and records pertaining to the Agreement available to the certified public accountant hired by the SFA, representatives CDE, USDA, and the Office of Inspector General (OIG) for audits or administrative reviews at a reasonable time and place. Surrender to the SFA, upon termination of the Agreement, all records pertaining to the operation of the food service, to include all production records, product invoices, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order, complete, and legible.
20. **Duty to Protect:** Vendors shall perform a criminal background check on any of the Vendors employees that will be working at the SFA and disclose results to the SFA.
21. **Insurance:** Vendors shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in California. A Certificate of Insurance of the Vendor's insurance coverage indicating these amounts must be submitted at the time of the award. Complete the information below based on the Vendor's Certificate of Insurance:
 - a. Comprehensive General Liability—includes coverage for:
 - 1) Premises—Operations
 - 2) Products—Completed Operations
 - 3) Contractual Insurance
 - 4) Broad Form Property Damage
 - 5) Independent Contractors
 - 6) Personal Injury—1,000,000 Combined Single Limit
 - b. Automobile Liability—1,000,000 Combined Single Unit
 - c. Workers' Compensation-Statutory; Employer's Liability—1,000,000
 - d. Excess Umbrella Liability—2,000,000 Combined Single Unit
 - e. The SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella. The Vendor must provide a waiver of subrogation in favor of the SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.
 - f. The insurance company insuring the Vendor shall provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.

G. General Assurances

1. **Amendments and Waivers.** Any term of this Agreement may be amended or waived only with the written consent of the parties.
2. **Sole Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.
3. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service, or confirmed facsimile, 48 hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.
4. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (1) such provision shall be excluded from this Agreement, (2) the balance of the Agreement shall be interpreted as if such provision were so excluded and (3) the balance of the Agreement shall be enforceable in accordance with its terms.
5. **Advice of Counsel.** Each party acknowledges 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. 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 Agreement template. CDE's review of the Agreement is limited to assuring compliance with federal and state procurement requirements. CDE does not review or judge the fairness, advisability, efficiency, or fiscal implications of the Agreement.

SCHOOL FOOD AUTHORITY / VENDOR SIGNATURES	
Name of School Food Authority's Authorized Representative	Title
Signature of School Food Authority's Authorized Representative ➤	Date Signed <i>Mo./Day/Yr.</i>
Name of Vendor's Authorized Representative	Title
Signature of Vendor's Authorized Representative ➤	Date Signed <i>Mo./Day/Yr.</i>