



**Model Fixed-Price Contract**  
**FOOD SERVICE MANAGEMENT COMPANY**

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William S. Hart Union High School District

21380 Centre Pointe Parkway  
Santa Clarita, CA 91350

661-259-0033

# Model Fixed-Price Contract

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## Contract Summary

<b>FOOD SERVICES CONTRACT</b>	<b>CONTRACT NUMBER</b> FS18-03A
	<b>REGISTRATION NUMBER</b>

  

<b>1</b>	This contract is entered into between the school food authority and the food service management company named below:										
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #ffffcc;"><b>SCHOOL FOOD AUTHORITY NAME</b></td> </tr> <tr> <td>William S. Hart Union High School District</td> </tr> <tr> <td style="background-color: #ffffcc;"><b>FOOD SERVICE MANAGEMENT COMPANY NAME</b></td> </tr> <tr> <td>Sodexo America, LLC</td> </tr> </table>	<b>SCHOOL FOOD AUTHORITY NAME</b>	William S. Hart Union High School District	<b>FOOD SERVICE MANAGEMENT COMPANY NAME</b>	Sodexo America, LLC						
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<b>3</b>	The maximum dollar amount of this Contract is equal to the fixed price per meal \$3.31 for lunch, \$1.60 for breakfast and \$3.31 for non-reimbursable meals (\$3 Meal Equivalent)										
<b>4</b>	<p>The parties herein agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Contract.</p> <table style="width: 100%;"> <tr> <td style="width: 60%;">Request for Proposal Released</td> <td style="width: 40%; text-align: right;">page(s) February 20, 2018 &amp; February 27, 2018</td> </tr> <tr> <td>Contractor Proposal Received</td> <td style="text-align: right;">Enter page(s) March 30, 2018</td> </tr> <tr> <td>Attached Terms and Conditions</td> <td style="text-align: right;">Enter page(s) 4-10</td> </tr> <tr> <td>Exhibit A: Scope of Work</td> <td style="text-align: right;">Enter page(s) 21-25</td> </tr> <tr> <td>Exhibit B: Schedule of Fees</td> <td style="text-align: right;">Enter page(s) 26</td> </tr> </table>	Request for Proposal Released	page(s) February 20, 2018 & February 27, 2018	Contractor Proposal Received	Enter page(s) March 30, 2018	Attached Terms and Conditions	Enter page(s) 4-10	Exhibit A: Scope of Work	Enter page(s) 21-25	Exhibit B: Schedule of Fees	Enter page(s) 26
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Exhibit B: Schedule of Fees	Enter page(s) 26										

  

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

<b>FOOD SERVICE MANAGEMENT COMPANY</b>	<i>California Department of Education Use Only</i>	
NAME of FSMC (if other than an individual, state whether a corporation, partnership, etc.)		
Sodexo School Services		
BY (Authorized Signature)		DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING		
Jude Medeiros, Vice President		
<b>ADDRESS</b>		
9801 Washington Blvd., Gaithersburg, Maryland 20878 Attn: Law Department		
<b>SCHOOL FOOD AUTHORITY</b>		
NAME of SFA		
William S. Hart Union High School District		
BY (Authorized Signature)	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Ralph Peschek, Chief Financial Officer		

☐ Exempt per:

## Model Fixed-Price Contract

### I. Introduction

The William S. Hart Union High School District hereinafter referred to as the school food authority (SFA), enters into this Contract with Sodexo America, LLC, hereinafter referred to as the food service management company (FSMC) to provide food service management assistance for the SFA's food service program, hereinafter referred to as "Services." **During the term of this Contract, the FSMC will provide services to the SFA as described in the Scope of Work (Exhibit A) of this Contract.**

### II. General Terms and Conditions

#### A. Term

The term of this contract is one year. The FSMC shall commence providing Services under the Contract on July 1, 2018, and continue through June 30, 2019. After careful consideration, the SFA may annually renew this Contract for four additional one year periods upon agreement between both parties. Execution of all contracts and amendments is contingent on approval by the California Department of Education (CDE). The SFA may cancel this Contract upon notification from the CDE that it or any part of the bidding process has been determined noncompliant with state and federal laws and regulations.

#### B. Designated Contract Liaisons

SFA Liaison for Services		FSMC Liaison for Services	
Name: Ralph Peschek		Name: Jude Medeiros	
Title: Chief Financial Officer		Title: Vice President	
Phone: 661-259-0033 x254	Cell Phone:	Phone: 415-265-0074	Cell Phone:
Fax: 661-259-4762	E-mail: rpeschek@hartsdistrict.org	Fax:	E-mail: Jude.medeiros@sodexo.com

Respondents shall serve or deliver by postal mail all legal notices to:

SFA	FSMC
Name: Ralph Peschek	Name: Sodexo America, LLC
Title: Chief Financial Officer	Title: Attn: Law Department
Address: William S. Hart Union High School District 21380 Centre Pointe Parkway, Santa Clarita, CA 91350	Address: 9801 Washington Blvd., Gaithersburg, MD 20878 Attn: Law Department

## C. Fees

### 1. Fixed-price Contracts

The SFA will pay the FSMC at a fixed rate per meal. The fixed rate per meal includes all fees and charges indicated in the Schedule of Fees (Exhibit B) of this Contract. The SFA must determine, and the FSMC shall credit the SFA for, the full value of U.S. Department of Agriculture (USDA) Foods. The FSMC's fixed-price invoice will be fully compliant with procurement requirements for the National School Lunch, School Breakfast, set forth in Title 7, *Code of Federal Regulations* (7 *CFR*), parts 210, 215, and 220, and the USDA Food and Nutrition Service (FNS) Final Rule issued Wednesday, October 31, 2007.

The FSMC shall take discounts, rebates, and other credits into account when formulating their prices for this fixed-price contract.

### 2. Payment Terms

The FSMC shall submit monthly invoices by 15th of the following month that reflect all activity for the previous calendar month. The FSMC must submit detailed cost documentation monthly to support all charges to the SFA. Charges and expenses are included in the Schedule of Fees (Exhibit B). All costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC, and must be allowable costs consistent with the cost principles in Title 2, *Code of Federal Regulations* (2 *CFR*), parts 225 or 230, as applicable. No expenditure may be made from the non-profit SFA food service account for any cost that fails to meet the requirement of 210.219f)(2), nor may any expenditure be made from the non-profit SFA food service account that permits or results in the FSMC receiving payments in excess of the FSMC actual, net allowable cost.

The SFA will pay undisputed invoices submitted by the FSMC within thirty (30) days of the invoice date. The SFA will notify the FSMC of invoices that do not pass audit, which the SFA will not pay until the invoices have passed audit, with no penalty accruing to the SFA. The SFA may, within fifteen (15) days of receipt of an invoice, reasonably request additional information and supporting documentation, in which case the SFA's time to pay the pending invoice shall be extended by an amount of time equal to the time in which it takes the FSMC to submit such information and/or documentation.

### 3. Interest, Fines, Penalties, and Finance Charges

Interest, fines, penalties, and finance charges that may accrue under this contract are not allowable expenses to the nonprofit school food service (cafeteria fund). The SFA will not pay unallowable expenses from the SFA's cafeteria fund.

### 4. Spoiled or Unwholesome Food

The SFA shall make no payment to the FSMC for food that, in the SFA's determination, is spoiled or unwholesome at the time of delivery, does not meet detailed food component

specifications as developed by the SFA for the meal pattern, or does not otherwise meet the requirements of this Contract (7 *CFR* Section 210.16[c][3]).

The SFA shall make no payment to the FSMC for meals that, in the SFA's determination, are spoiled or unwholesome at the time of delivery, do not meet detailed food component specifications as developed by the SFA for the meal pattern, or do not otherwise meet the requirements of this Contract (7 *CFR* Section 210.16[c][3]).

#### **D. Contract Cost Adjustment**

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 SFA to rebid the Contract.

#### **E. Availability of Funds**

Every payment obligation of the SFA under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. The SFA may terminate this Contract at the end of the period for which funds are available if funds are not allocated and available for the continuance of this Contract. In the event the SFA exercises this provision, no liability shall accrue to the SFA and the SFA shall not be obligated or liable for any future payments or for any damages resulting from termination under this provision.

#### **F. Timeliness**

Time is of the essence in this Contract and failure of the FSMC to perform services in a timely manner is a material breach of this Contract unless such failure is due to the inability of SFA to provide information or approvals within reasonable time as requested by FSMC.

#### **G. Approval**

This Contract has no force or effect until it is signed by both parties and is approved by the CDE.

#### **H. Amendment**

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by both parties, and approved by the CDE. Any oral understanding or agreement not incorporated into the Contract in writing and approved by the CDE is not binding on either party.

#### **I. Substantive Changes to Contract**

Any change to this Contract that results in a material change or any proposed renewals of this Contract may, at the determination of the CDE, either void this Contract or require the SFA to rebid the Contract. Following are examples of substantive changes that could require the SFA to rebid the Contract:

- The addition of a program
- A major shift in responsibilities for FSMC/SFA staff
- A modification that changes the scope of the Contract or increases the price of the Contract by more than the applicable federal, state, or local small purchase threshold (7 *CFR* Section 3016.36[g][2][iv] and [v])

#### **J. Subcontract/Assignment**

No provision of this Contract shall be assigned or subcontracted without prior written approval of the SFA.

#### **K. Written Commitments**

Any written commitment by the FSMC relative to the services herein shall be binding upon the FSMC. Failure of the FSMC to fulfill any such commitment shall render the FSMC liable for damages due to the SFA. Such written commitments include, but are not limited to:

- Any warranty or representation made by the FSMC in any publication, drawing, or specifications accompanying or referred to in the proposal pertaining to the responsiveness of the proposal
- Any written notifications, affirmations, or representations made by the FSMC in, or during the course of, negotiations that are incorporated into a formal amendment to the proposal

#### **L. Trade Secrets/Copyrights**

The FSMC and SFA shall designate any information they consider confidential or proprietary—including recipes, surveys and studies, management guidelines, operational manuals, and similar documents—that the SFA and FSMC regularly use in the operation of their business or that they develop independently during the course of this Contract. Information so designated and identified shall be treated as confidential by the FSMC and the SFA, and the FSMC and the SFA shall exercise the same level of care in maintaining the confidences of the other party as they would

employ in maintaining their own confidences, unless disclosure is otherwise required under the law. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this Contract. Notwithstanding, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, the following for federal government purposes:

- The copyright in any work developed under a federal grant, subgrant, or contract under a grant or subgrant
- Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with federal grant support (7 *CFR* Section 3016.34)

#### **M. Severability**

Should any provision(s) of this Contract be declared or found to be illegal, unenforceable, ineffective, and/or void, then each party shall be relieved of any obligations arising from such provision(s). The balance of this Contract, if capable of performance, shall remain and continue in full force and effect.

#### **N. Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

#### **O. Silence/Absence/Omission**

Any silence, absence, or omission from the Contract specifications concerning any point shall mean that only the best commercial practices are to prevail. Only those materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

#### **P. Indemnification**

The FSMC shall indemnify and hold harmless the SFA, or any employee, director, agent, or Board Member of the SFA, from and against all claims, damages, losses, costs, and expenses (including attorney's fees and court costs incurred to defend litigation), and decrees, judgments or other liabilities whatsoever arising from any and all injuries, including death or damages to or destruction of property resulting from the FSMC's acts or omissions, willful misconduct, negligence, or breach of the FSMC's obligations under this Contract by the FSMC, its agents, employees, or other persons under its supervision and direction.

Any defense of SFA and/or SFA agent shall be by qualified and appropriately experienced legal counsel reasonably acceptable to SFA by selected and retained by FSMC at its sole cost.

The FSMC shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the SFA's sole acts or omissions.



## **Q. Sanctions**

For the breach of the Contract and associated benefits:

If the FSMC causes the breach, the FSMC assumes liability for any and all damages, including excess cost to the SFA in procuring similar services, and is liable for administrative, contractual, and legal remedies, as applicable.

## **R. Force Majeure**

1. 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.
2. Force majeure does not include any of the following occurrences:
  - Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market
  - Late performance by a subcontractor, unless the delay arises out of a force majeure occurrence
  - Inability of either the FSMC or any of its subcontractors to acquire or maintain any required insurance, bonds, licenses, or permits
3. 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 work day or the commencement thereof, and shall specify the causes of such delay. Such notice shall be delivered by hand or sent by postal mail with a certified return receipt requested 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 be extended by contract amendment, as long as the amended period does not violate 7 *CFR* Section 210.16(d).
4. 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.

## **S. Nondiscrimination**

Both the SFA and FSMC agree that no child who participates in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Summer Food Service Program (SFSP), or Child and Adult Care Food Program (CACFP) will be discriminated against on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income derived from any public assistance program or protected genetic information in employment or in any program or activity conducted or funded by the USDA. (Not all prohibited bases will apply to all programs and/or employment activities.)

#### **T. Compliance with the Law**

The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies regarding purchasing, sanitation, health, and safety for the food service operations and shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, in the FSMC's compliance efforts.

The FSMC shall comply with 2 *CFR* parts 225 or 230 as applicable, 7 *CFR* parts 210 (NSLP), 220 (SBP), 225 (SFSP), 226 (CACFP), 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools) as applicable, 250 (Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction), 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations), USDA FNS Instructions and policy, federal laws and regulations, California *Education Code (EC)*, and California laws and regulations, where applicable.

#### **U. Choice of Law**

This Contract shall be construed under the laws of the state of California, where applicable, without giving effect to the principles of conflict of laws. Any action or proceeding arising out of this Contract shall be heard in the appropriate courts in California.

#### **V. Advice of Counsel**

Each party acknowledges that, in executing this Contract, 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 Contract.

### **III. Relationship of the Parties**

- A.** The FSMC's relationship with the SFA will be that of an independent contractor and not that of an employee of or supervisor for the SFA. The FSMC will not be eligible for any employee benefits, nor will the SFA make deductions from payments made to the FSMC for taxes; all of which will be the FSMC's responsibility. The FSMC agrees to indemnify and hold the SFA harmless from any liability for, or assessment of, any such taxes imposed on the SFA by relevant taxing authorities. The FSMC will have no authority to enter into

contracts that bind the SFA or create obligations on the part of the SFA (*EC* Section 45103.5).

- B.** Where the SFA is a public school district or program operated by the county Office of Education, the FSMC, as an independent contractor, shall have no authority to supervise food service classified personnel operating the NSLP and SBP under the NSLP (*EC* Section 45103.5).
- C.** All services to be performed by the FSMC will be as agreed between the FSMC and the SFA. The FSMC will be required to report to the SFA concerning the services performed under this Contract. The SFA shall determine the nature and frequency of these reports.
- D.** The SFA is the responsible authority, without recourse to USDA or CDE, for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature.

#### **IV. Food Service Program**

##### **A. Food Service Management Company Responsibilities**

- 1. The SFA will provide an electronic Point of Service (POS) meal counting system. Such meal/milk counting system must eliminate any potential for the overt identification of free and reduced-price eligible students under 7 *CFR* Section 245.8.
- 2. The FSMC shall, to the maximum extent practicable, purchase domestic commodities or products (7 *CFR* Section 210.21[d][2]).

##### **B. School Food Authority Responsibilities**

- 1. The SFA shall ensure that the food service operation is in conformance with the SFA's Permanent Single Agreement with the CDE and will monitor the food service operation through periodic on-site visits (7 *CFR*, sections 210.16[a][2] and 210.16[a][3]).
- 2. The SFA shall retain control of the quality, extent, and general nature of the food service program and establish all program and nonprogram meal and a la carte prices (7 *CFR*, sections 210.9[b][1] and 210.16[a][4]).
- 3. SFAs with more than one school shall perform no less than one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the SFA shall ensure that the school implements corrective action and, within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problem. Each on-site review shall ensure that the school's claim is based on the counting system authorized by the CDE under 7 *CFR* Section 210.7(c) and that the counting system, as implemented, yields the actual number of reimbursable free,

reduced-price, and paid lunches respectively, served for each day of operation (7 *CFR* Section 210.8[a][1]).

4. The SFA shall retain control of the nonprofit school service account and overall financial responsibility for the nonprofit food service operation; the quality, extent, and the general nature of its food service; and the prices children are charged for meals (7 *CFR* Section 210.16[a][4]).
5. The SFA shall retain responsibility for developing the meal pattern for students with disabilities, when their disability restricts their diet, and for those students without disabilities who are unable to consume the regular lunch because of medical or other special dietary needs (7 *CFR* Section 210.10[g]).[m](#)
6. The SFA shall retain signature authority for the food services application, agreements, Free and Reduced-Price Policy Statement, monthly Claim for Reimbursement, reports, program renewal, the verification of applications, letters to households, and all correspondence to the CDE relating to the food service program (7 *CFR* Section 210.16[a][5]).
7. The SFA shall retain signature authority and be responsible for all contractual agreements entered into in connection with the food service program (7 *CFR* Section 210.21).
8. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster (*EC* Section 49558).
9. The SFA shall be responsible for the development, distribution, and collection of the letter to households and Application for Free and Reduced-Price Meals and/or Free Milk. (*EC* Section 49558 and 7 *CFR* Section 245.6).
10. If the SFA uses direct certification of eligibility, the SFA shall be responsible for obtaining the direct certification list at least annually (*EC* Section 49558).
11. The SFA shall be responsible for the determination of eligibility for free and reduced-price meals and shall disclose the eligibility status of individual students or confidential information provided on the application for free or reduced-price meals to the FSMC, to the extent that such information is necessary for the FSMC to fulfill its obligations under this Contract. The FSMC will not disclose the eligibility status of individual students or confidential information provided.
12. The SFA shall be responsible for conducting any hearings related to determinations regarding free and reduced-price meal eligibility (*EC* Section 49558 and 7 *CFR* Section 245.7).
13. The SFA shall be responsible for verifying applications for free and reduced-price meals as required by federal regulations (7 *CFR* sections 245.6 and 245.6a).

14. The SFA shall establish and maintain an advisory board composed of parents, teachers, and students to assist with menu planning (7 *CFR* Section 210.16[a][8]).
15. The SFA shall maintain applicable health certification and ensure that all state and local regulations are being met by the FSMC preparing or serving at an SFA facility (7 *CFR* Section 210.16[a][7]).

## **V. U.S. Department of Agriculture Foods**

### **A. Food Service Management Company Responsibilities**

1. The FSMC shall fully use, to the maximum extent possible, USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA's nonprofit school food program (7 *CFR* Section 210.16[a][6]).
2. In accordance with 7 *CFR* Section 250.53, the FSMC shall comply with the following provisions relating to the use of USDA Foods, as applicable:
  - a. The FSMC must credit the SFA for the value of all USDA Foods (including both entitlement and bonus foods) received for use in the SFA's meal service in the school year or fiscal year. The credit must include the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA, or acts as an intermediary in passing on the USDA Food value of processed end products to the SFA (7 *CFR* Section 250.51[a])
  - b. The FSMC shall account for the full value of USDA Foods (7 *CFR* Section 250.51) by:
    - i) Subtracting the value of all USDA Foods received for use in the SFA's food service from the SFA's (monthly/quarterly) invoice, and
    - ii) Using the Average Price File for the school year that the USDA Foods are received by the SFA. This listing is available from the USDA Food Distribution Web page at <http://www.fns.usda.gov/fdd/processor-pricing-reports>
3. The FSMC will be responsible for any activities relating to USDA Foods in accordance with 7 *CFR* Section 250.50(d)(2), (3), and (4), and will ensure that such activities are performed in accordance with the applicable requirements in 7 *CFR* Part 250.
4. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
5. The FSMC must use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service (7 *CFR* Section 250.51[d]).

6. In accordance with 7 *CFR* Section 250.51(d), the FSMC may, in most cases, use commercially purchased foods of the same generic identity, of U.S. origin and of equal or better quality, in place of donated foods. Exceptions are donated ground beef, donated ground pork, and all processed end products, which contain donated foods that may not be replaced with commercial substitutes. The SFA must ensure that such substitution has been made and that it has received credit for the value of all donated foods received, in accordance with review requirements in 7 *CFR* Section 250.54(c).
7. According to 7 *CFR* Section 250.53(a)(7), the FSMC shall ensure that the processing agreement's value will be used in crediting the SFA for the value of USDA Foods contained in end products.
8. The FSMC will provide assurance that it will not itself enter into the processing agreement with the processor required in subpart C of 7 *CFR* Part 250.
9. The FSMC will provide assurance that it will comply with the storage and inventory requirements for USDA Foods.
10. The distributing agency, subdistributing agency, the CDE, SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
11. The FSMC will maintain records to document its compliance with requirements relating to USDA Foods, in accordance with 7 *CFR* Section 250.54(b).
12. Any extensions or renewals of the Contract, if applicable, are contingent upon the fulfillment of all Contract provisions relating to USDA Foods.

## **B. School Food Authority Responsibilities**

1. The SFA shall retain title to all USDA Foods and ensure that all USDA Foods received by the SFA and made available to the FSMC accrue only for the benefit of the SFA's nonprofit school food service and are fully used therein (7 *CFR* Section 210.16[a][6]).
2. The SFA shall accept and use, in as large quantities as may be efficiently used in its nonprofit food service program, such foods as may be offered as a donation by USDA (7 *CFR* Section 210.9[b][15]).
3. The SFA will maintain records to document its compliance with requirements relating to USDA Foods and conduct reconciliation (at least annually and upon termination of the Contract) to ensure that the FSMC has credited the value of all USDA Foods in accordance with 7 *CFR* sections 250.54(a) and (c).

## **VI. Meal Responsibilities**

### **A. The FSMC shall:**

1. Serve meals on such days and at such times as requested by the SFA.
2. Offer free, reduced-price, and paid reimbursable meals to all eligible children through the SFA's food service program.
3. Provide meals through the SFA's food service program that meet the requirements as established in 7 *CFR* Part 210.

## **VII. Food Service Management Company Employees**

- A.** The FSMC shall only place staff for work in the SFA that met the minimum professional standards outlined in 7 *CFR* 210.30 which can be viewed at the following web page: [http://www.fns.usda.gov/sites/default/files/cn/profstandards\\_flyer.pdf](http://www.fns.usda.gov/sites/default/files/cn/profstandards_flyer.pdf). The SFA shall ensure that all staff the FSMC proposes for placement meet the minimum professional standards. The FSMC shall ensure their employees take the required annual training as outlined in the professional standards and provide certification of such training to the SFA. The FSMC shall remove from the SFA premises any staff who fail to take the required training, who violates health requirements, conducts himself/herself in a manner, which is detrimental to the physical, mental or moral well-being of students or staff and/or at the reasonable request of SFA. In the event of removal of any such employee, FSMC shall immediately restructure its staff to prevent disruption in services.

The FSMC shall provide the SFA with a list of proposed employees and evidence that they meet the professional standards.

- B.** The SFA reserves the right to interview and approve the on-site food service consultant(s)/employee(s).
- C.** The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and work hours. The FSMC will provide specific locations and assignments to the SFA four (4) calendar weeks prior to the commencement of operation.
- D.** The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC will be responsible for supervising and training their personnel.
- E.** The FSMC agrees to assume full responsibility for the payment of all contributions and assessments, both state and federal, for all of its employees engaged in the performance of this Contract.

- F.** The FSMC agrees to furnish the SFA, upon request, a certificate or other evidence of compliance with state and federal laws regarding contributions, taxes, and assessments on payroll.
- G.** The FSMC will be solely responsible for all personnel actions regarding employees on its respective payroll. The FSMC shall withhold and/or pay all applicable federal, state, and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees, and workers' compensation costs, and shall file all required documents and forms. The FSMC shall indemnify, defend, and hold the SFA harmless from and against any and all claims, liabilities, and expenses related to, or arising out of, the indemnifying party's responsibilities set forth herein.

## **VIII. Books and Records**

- A.** The SFA and the FSMC must provide all documents as necessary for an independent auditor to conduct the SFA's single audit. The FSMC shall maintain such records as the SFA will need to support its Claims for Reimbursement. Such records shall be made available to the SFA upon request and shall be retained in accordance with 7 *CFR* Section 210.16(c)(1).
- B.** The SFA and the FSMC shall, upon request, make all accounts and records pertaining to the nonprofit food service program available to the CDE and USDA FNS for audit or review at a reasonable time and place. Each party to this Contract shall retain such records for a period of three (3) years after the date of the final Claim for Reimbursement for the fiscal year in which this Contract is terminated, unless any audit findings have not been resolved. If audit findings have not been resolved, then records shall be retained beyond the three-year period as long as required for resolution of issues raised by the audit (7 *CFR* Section 210.9[b][17]).
- C.** The FSMC shall not remove state or federally required records from the SFA premises upon contract termination.
- D.** The SFA and the FSMC shall allow the CDE, USDA, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the FSMC that are directly pertinent to the Contract for the purpose of making any audit, examination, excerpts, and transcriptions (7 *CFR* Section 3016.36[i][10]).

## **IX. Monitoring and Compliance**

- A.** The FSMC shall monitor the food service operation of the SFA through periodic on-site visits in order to develop recommendations for improvement of the food service program.



- B.** The FSMC warrants and certifies that in the performance of this Contract it will comply with all applicable statutes, rules, regulations, and orders of the United States and the state of California.
- C.** The SFA shall establish internal controls that ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement in accordance with 7 *CFR* Section 210.8(a). At a minimum, these internal controls shall include all of the following:
  - An on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA (7 *CFR* Section 210.8[a][1])
  - Comparisons of daily free, reduced-price, and paid lunch counts against data that will assist with the identification of lunch counts in excess of the number of free, reduced-price, and paid lunches served each day to children eligible for such lunches
  - A system for following up on lunch counts that suggest the likelihood of lunch counting problems.

**X. Equipment, Facilities, Inventory, and Storage**

- A.** The SFA will make available to the FSMC, without any cost or charge, area(s) of the premises agreeable to both parties in which the FSMC shall render its services. The SFA shall provide the FSMC with local telephone service. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA's premises.
- B.** The FSMC shall notify the SFA of any equipment belonging to the FSMC on the SFA's premises within 10 days of its placement on the SFA's premises.
- C.** The premises and equipment provided by the SFA for use in its nonprofit food service program shall be in good condition and maintained by the SFA to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health including, without limitation, Occupational Safety and Health Administration regulations. The SFA further agrees that any structural or nonstructural modifications or alterations to the workplace or the premises necessary to comply with any statute or governmental regulation shall be the responsibility of the SFA and shall be at the SFA's expense. This provision shall survive termination of this Contract.
- D.** The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- E.** Ownership of the beginning inventory of food and supplies shall remain with the SFA.
- F.** All USDA Foods shall remain with the SFA.

- G.** Ownership of all nonexpendable supplies and capital equipment shall remain with the SFA. However, the FSMC must take such measures as may be reasonably required by the SFA for protection against loss, pilferage, and/or destruction.

## **XI. Certifications**

- A.** The FSMC warrants and certifies that in the performance of this Contract, it will comply with the rules and regulations of the CDE and the USDA, and any additions or amendments thereto, including but not limited to 2 *CFR* parts 225 and 230; 7 *CFR* parts 210, 220, 225, 245, 250, 3016, and/or 3019; and USDA FNS Instruction and policy, as applicable. The FSMC agrees to indemnify the SFA and the CDE against any loss, cost, damage, or liability by reason of the FSMC's violation of this provision.
- B.** The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments; Section 504 of the Rehabilitation Act of 1973; and any additions or amendments to any of these regulations.
- C.** The SFA and FSMC shall comply with all applicable standards, orders, or regulations issued, including:
- Section 306 of Clean Air Act (42 *U.S.C.* 1847[h]):  
<http://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap85-subchapIII-sec7602.pdf>
  - Section 508 of the Clean Water Act (33 *U.S.C.* 1368):  
<http://www.gpo.gov/fdsys/pkg/USCODE-2013-title33/pdf/USCODE-2013-title33-chap26.pdf>
  - Executive Order 11738: <http://www.epa.gov/isdc/eo11738.htm>
  - Environmental Protection Agency (EPA) regulations at Title 40, *Code of Federal Regulations*, Part 15, et seq. ([http://www.ecfr.gov/cgi-bin/text-idx?SID=9ed90ed6fc9c89c5c8465c743584c79a&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=9ed90ed6fc9c89c5c8465c743584c79a&tpl=/ecfrbrowse/Title40/40tab_02.tpl)). Environmental violations shall be reported to the USDA and the U.S. EPA Assistant Administrator for Enforcement, and the FSMC agrees not to use a facility listed on the EPA's List of Violating Facilities

### **D. Debarment Certification**

The USDA Certification Regarding Debarment must accompany each subsequent four (4) additional one-year renewals (7 *CFR* Section 3017.510). Contract renewals that do not include this certification will not be accepted for consideration.

**E. Lobbying**

The Certification Regarding Lobbying and a Disclosure of Lobbying Activities form (Appendix A: 7 *CFR* Part 3018) must accompany each subsequent four (4) additional one-year renewals (7 *CFR* Section 3017.510). Contract renewals that do not include this certification will not be accepted for consideration.

**F. Energy Policy and Conservation Act:** <http://legcounsel.house.gov/Comps/EPCA.pdf>.

The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

**G. Contract Work Hours and Safety Standards Act Compliance:**  
<https://www.dol.gov/whd/govcontracts/cwhssa.htm>

In performance of this Contract, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.

## **XII. Insurance**

The parties shall maintain, at their sole cost and expense, and, during all periods as required by this Contract, the following insurances from a California licensed, authorized and/or admitted insurer with a A- XV, or better rating from A.M. Best:

**A. Workers' Compensation Insurance**

Each party shall maintain Workers' Compensation Insurance coverage as required by state law, and Employers' Liability insurance with coverage in an amount not less than one million dollars (\$1,000,000.00) for each accident covering all employees employed in connection with child nutrition program operations.

**B. Comprehensive or Commercial Insurance**

The FSMC shall maintain during the term of this Contract, for protection of the SFA and the FSMC, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than five million dollars (\$5,000,000.00) for each occurrence, including, but not limited to, Personal Injury Liability, Broad Form Property Damage Liability on the FSMC-owned property, Blanket Contractual Liability, and Products Liability, covering only the operations and activities of the FSMC under the Contract and, upon request, shall provide the SFA with a certificate evidencing such policies and must include a separate endorsement naming the SFA, its; employees, directors, and agents as additional insureds. The insurance policies shall contain a provision whereby the insurer(s) shall provide notice of cancellation in accordance with the provisions of the policy.

### C. Property Insurance

The SFA shall maintain, or cause to be maintained, a system of coverage either through purchased insurance, self-insurance, or a combination thereof to keep the buildings, including the premises, and all property contained therein insured against loss or damage by fire, explosion, or other cause normally covered by standard broad form property insurance.

### XIII. Fingerprinting

For any work performed by FSMC at SFA facilities, FSMC employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any SFA site pursuant to Education Code 45125.1. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony, or has been convicted of a violent or serious felony as those terms are defined in Penal Code sections 667.5© and 1192.7©, respectively. FSMC shall not permit an employee to come into contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45125.1. FSMC shall provide SFA with a list of names of employees who may come into contact with students and must certify in writing to the SFA that none of its employees who may come into contact with students have been convicted of a felony as defined in Education Code 45125.1, SFA may request the removal of an employee from a SFA site at any time. Failure to comply with any provisions of this Section may result in termination of the Contract.

### XIV. Termination

Either party may terminate this Contract at any time upon 60-days' written notice (7 *CFR* Section 210.16[d]).

Either party may cancel for cause with a 60-day notification if either party breaches a provision of this Contract ("cause"). The nonbreaching party shall give the other party notice of such cause. If the cause is not remedied within 10 days, the nonbreaching party shall give a 60-day notice to the breaching party of their intent to terminate this Contract upon expiration of the 60-day period. This Contract may be terminated, in whole or in part, for convenience by the SFA with the consent of the FSMC, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated (7 *CFR* Section 3016.36[i][2]). The Contract may also be terminated, in whole or in part, by the FSMC upon written notification to the SFA, setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, in the case of a partial termination, if the SFA determines that the remaining portion of the Contract will not accomplish the purposes for which the Contract was made, the SFA may terminate the Contract in its entirety under either 7 *CFR*, Section 3016.43, or 7 *CFR*, Section 3016.44(a), pursuant to 7 *CFR* Section 3016.44. The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

Exhibit A  
**Scope of Work**

**1. Overview of William S. Hart Union High School District Food Service Program**

- A. Scale. FSMC has the exclusive right to provide and manage the employees who will purchase, prepare, deliver and serve for the SFA's nonprofit and a la carte food program for the students, employees, visitors and guests of the fifteen (15) schools of the SFA. FSMC is expected to recommend the number of work hours and the number of positions required at each school location. The SFA will provide daily food service to approximately 22,659 children at 15 sites. The food service prepares approximately 648,720 lunches annually and 203,580 breakfasts annually.
- B. Financial Goals. The FSMC shall operate the SFA's nonprofit food service program as a cost neutral / break even program. Inclusive in the budget submission from FSMC shall be allowances for program indirect cost, general preventive maintenance, repairs to district equipment and facilities, pest management, one FTE for SFA district clerical, and all other costs relating to the operation of the SFA's nonprofit food service program.
- C. Management Goals. The SFA's food service goals are to provide nutritious, high-quality meals to students and participants in the National School Lunch Program and the School Breakfast Program, to accommodate special diets where medically necessary, improve the nutritional quality of meals, and maintain a financially viable food service program. Food to be served includes reimbursable meals as defined by the United States Department of Agriculture in addition to numerous a la carte items. General food service goals are to:
- Provide an appealing and nutritionally sound program for students and participants as economically as possible
  - Stimulate both student and adult participation in the program through improved relations with students, staff, and the community by creating awareness of the direct correlation between adequate nutrition for students and their ability to learn
  - Increase participation at all levels of the food service program by improving meal quality, seeking student and parent input, offering menu variations, and improving planning
  - Maintain reasonable prices for students and adults participating in the food service program
  - Maintain facility sanitation and comply with all federal, state and local laws
- D. Food Service Office and Staff. The food service office is located at 26255 West Valencia Boulevard, Stevenson Ranch, CA 91381.

## E. National School Lunch Program and School Breakfast Program.

### Participation

PROGRAM	GRADES	MAX ENROLLMENT*	AVERAGE DAILY PARTICIPATION	FULL PAY*	FREE/REDUCED
National School Lunch (NSLP)	7-12	22,659	3,604	1,230	2,374
School Breakfast Program (SBP)	7-12	22,659	1,131	148	983

\*These numbers are based on full enrollment as of October 31 for the 2017/18 school year. There is no guarantee these numbers will be met.

## 2. Description of FSMC Responsibilities

General: under the direction of the SFA's Chief Financial Officer, the FSMC selected pursuant to this RFP will provide the following. FSMC will provide all management, administrative and dietetic services required for the efficient supervision and operation of the SFA's food service program. FSMC will provide food services for administration and student related functions as reasonably requested by SFA. FSMC shall invoice all food and labor costs of these functions directly to the requesting school or department. In addition, the FSMC will provide all management, administrative and dietetic services required for the efficient supervision and operation of the SFA's food service program. FSMC will provide food services for administration and student related functions as reasonably requested by SFA. FSMC shall invoice all food and labor costs of these functions directly to the requesting school or department.

Responsibilities of the FSMC shall include:

### A. Purchasing of Supplies for the Food Service Program

Recommend (or be responsible for) purchasing standards and specifications that will result in the best quality of products and services at the lowest price for the food service program.

All transactions shall be conducted in a manner so as to provide maximum open and free competition as provided by statute and regulation.

The grade, purchase unit, style, weight, ingredients, formulation, etc., shall be in compliance with applicable statutes and regulations.

Purchase food and/or supplies (if applicable); if authorized by the SFA, the FSMC shall purchase food used by the food service operation at the lowest price possible consistent with maintaining the quality standards prescribed by the SFA and the purchasing of food shall not displace SFA staff or delegate responsibilities of the SFA to the FSMC.

Request, receive and inspect food delivered by vendors in accordance with regulations.

Recommend new or improved procedures for the requisition, receipt, and verification of all supplies used by the food service operation.

## **B. Facility or Site Operations**

The FSMC shall recommend:

- Safety programs for employees
- Sanitation standards for housekeeping, preparation, storage, and equipment
- Adjustments to practices and operation of equipment as required
- A Food Safety Plan and participate in the development, implementation, and maintenance of said plan
- Methods to increase participation at all levels of the SFA's food service programs, improve food quality, and upgrade equipment and facilities
- Hours and number of positions at each site to meet food service operational needs

## **C. Menus**

Adhere to the 21-day cycle menu for the first 21 days of meal service; thereafter, the FSMC may only make changes with the SFA's approval (7 *CFR* 210.16[b][1]).

Provide recommendations for menu development that will result in the best quality of products and services at the lowest price for the food service program.

Seek student and parent input on successful menu variation and planning.

Provide, upon request by the SFA, recommended menus to assure compliance with all applicable statutes and regulations; include menu recommendations to meet the needs of students with special dietary needs or disabilities

## **D. Quality Control**

Recommend or establish a formal structure to routinely and continuously gather input from students, staff, and parents about food services.

Recommend or establish a structure or process to routinely and continuously gather input from food service employees to ensure the most effective and efficient operation possible.

## **E. Staff**

Recommend management staff and structure that will enhance the SFA's food service programs and ensure that the SFA's food service programs are of consistent top quality and held in positive regard by students, staff, and the public.

Recommend or establish and conduct management and staff training programs that will ensure staff development, proper supervision, professional/health certification, and consistent quality control both in production and service

## **F. Records**

Maintain full and complete financial and inventory records sufficient to meet federal and state requirements and that are in accordance with generally accepted accounting.

Maintain employment records that show FSMC staff have all professional and health certifications as required by federal or state law and the SFA

Make records available for inspection and audit upon request of the SFA at any reasonable time and place. Such records include, but are not limited to, Daily Cash Reports, Edit Check Worksheets, Milk Rosters and Summary Meal/Milk counts.

## **G. Education**

Recommend actions or events to promote the nutrition education aspects of the food service program, and recommend or cooperate with efforts to merge these actions or events with classroom instruction; the FSMC will work in partnership with the SFA to educate students, parents, teachers, and the community about efforts to promote better nutrition and health.

Coordinate meeting times with the Food Service Director, other SFA staff, and parents or students to discuss ideas to improve the food service program; arrange meetings between an acceptable management representative of the FSMC and the Food Service Director, other SFA staff, and/or the school board, upon request

## **H. Reports**

Collect and provide, in the required format, information necessary for school food service claims for reimbursement from state and federal agencies and maintain records of past information; at the end of each month the number of meals to be claimed will be submitted to the SFA contact by the FSMC consultant/representative on or before the 15th of each month (7 CFR 210.16[c][1]).

Provide the SFA with monthly operating statements, including but not limited to the daily number of meals served, a la carte sales, reduced price and full price National School Lunch Program and School Breakfast Program meals served and other information determined by the SFA regarding the food service programs.



## **I. Point of Service**

Utilize the SFA's meal count system to provide an accurate point of service meal count to eliminate the potential for the overt identification of free and reduced-price eligible students under 7 *CFR* Section 245.8

## Exhibit B

### Schedule of Fees

The costs included in the Cost per Meal table comprise the fixed price per meal. The fees are agreed upon by both parties and represent allowable food service costs in accordance with 2 *CFR* parts 225 and 230 as applicable.

**All costs are based on the average daily participation of 6,393 meals served in the district and 180 number of school days.**

### Cost per Meal

Note: Prices must **not** include values for USDA Foods, and must include all meal programs.

LINE ITEM	UNITS*	RATE	TOTAL
Breakfast (1:1)	203,580	\$1.60	\$325,728
Lunch (1:1)	648,720	\$3.31	\$2,160,886
Nonreimbursable Meals (\$3.00 meal equivalent)	298,500	\$3.31	\$994,304
TOTAL	1,150,800	\$3.025	\$3,480,918

\*Units to be provided by SFA

Total Fixed Price Per Meal with estimated CPI of  
2.5%

Year	Rate
2019-2020	\$3.100
2020-2021	\$3.178
2021-2022	\$3.257
2022-2023	\$3.339