



**HOLYOKE PUBLIC SCHOOLS
FOOD SERVICE MANAGEMENT AGREEMENT**

Upon execution by all parties, this School Food Service Management Agreement ("Agreement") shall be effective as of July 1, 2022, by and between the **City of Holyoke, Mass.**, a municipal corporation with an address at 536 Dwight Street, Holyoke, MA. 01040, acting by and through the Holyoke Public Schools ("HPS"), with the approval of the School Committee and the Mayor (hereinafter the "City" or "SFA"), and **Sodexo Operations, LLC**, a Delaware limited liability company with an address at **9801 Washingtonian Blvd., Gaithersburg, MD 20878**, as the Food Service Management Company ("Sodexo" or "FSMC").

WHEREAS, the HPS School Food Service Program ("Program") includes breakfast, lunch, after school snacks, dinner, and a Summer Food Service program; and

WHEREAS, the Program is currently offered on a universally free basis by the HPS pursuant to the *Community Eligibility Program ("CEP")*, approved by the Commonwealth of Massachusetts Department of Elementary and Secondary Education; and

WHEREAS, the City, acting by and through the HPS, seeks to improve the efficiency, quality and cost effectiveness of the Program; and

WHEREAS, the City's objective is to provide a nutritionally sound, appealing breakfast, lunch, dinner, and snack program to the students and staff of the City in a professional, financially sound, and responsible manner; and

WHEREAS, the City, acting by and through the Holyoke Public Schools, as the School Food Authority ("SFA"), advertised a Request for Proposals (Bid No. 2022-008) ("RFP") for a Food Service Management Agreement, and Sodexo submitted a Technical Proposal and Price Proposal in response to the RFP; and

WHEREAS, Sodexo has the qualifications and experience to operate the Program and provide related management services requested by the HPS, and was selected by the City as the FSMC pursuant to the public Request for Proposals ("RFP") process.

NOW THEREFORE, the parties agree as follows:

ARTICLE I -INTRODUCTION

- 1.1 Date of and Parties to the Agreement. This Contract Agreement ("Agreement"), dated July 1, 2022, is made between the City of Holyoke, Massachusetts, a Massachusetts municipal corporation with an address at 536 Dwight Street, Holyoke, MA 01040, acting by and through the Holyoke Public Schools ("HPS"), with the approval of its School Committee and its Mayor (hereinafter called the "City", or School Food Authority ("SFA")), and Sodexo Operations, LLC., a Delaware limited liability company with its principle place of business at 9801 Washingtonian Boulevard, Gaithersburg, Maryland 20878, hereafter called the Food Service Management Company ("FSMC").
- 1.2 Purpose of Agreement. This Agreement sets forth the terms and conditions upon which the SFA

retains the FSMC to manage and operate the SFA's Food Service Program.

1.3 Duration of Contract.

a) Initial Term: Upon execution by all parties, the initial term of this Agreement shall commence on July 1, 2022, and shall continue until June 30, 2023, contingent upon city council approval for a 5 year term, unless terminated as hereinafter provided.

b) Renewal Options: The Agreement is subject to up to four (4) additional one-year renewals upon mutual agreement of the parties. [7 CFR § 210.16 (d)] All terms and conditions of this Agreement shall apply during any renewal period, unless the parties agree, in a written amendment signed by all parties, to amend, add or delete any provision. In the event the Agreement is renewed, the subsequent term/s shall commence on July 1st and end on June 30th of the following year. The SFA will give the FSMC written notice of its intent to renew the Agreement for a subsequent term by March 30th of the current term. Renewals of the contract are contingent upon the fulfillment of all contract provisions relating to donated foods. [7CFR §250.53(a)(12)].

c) Prohibited Contracts- §210.16(c)—contracts that permit all income and expenses to accrue to the food service management company and “cost-plus-a-percentage-of-income” contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed.

d) Once fully executed, the Agreement may not be changed other than by a written amendment signed by the parties hereto.

1.4 Contract Documents: The parties agree that the terms of this Agreement shall also include the City's Request for Proposals (RFP) published by the SFA and any addenda thereto, and the FSMC's Technical Proposal and Price Proposal, which due to the size of the documents are not attached hereto but are on file with the City's Office of Procurement and are incorporated herein by reference, and the Mass. Dept. of Elementary and Secondary Education SFA-FSMC Mandatory Contract language and Unallowable Contract Language checklist ("DESE Checklist"), which is attached hereto as Attachment #1, and incorporated herein by reference. In the event that contradictory statements are contained in the RFP, the FSMC Proposals, the DESE Checklist, and this Agreement, the following order of precedence shall apply: (i) DESE Checklist; (ii) this Agreement; (iii) the RFP; (iv) the FSMC Technical Proposal; and (v) the FSMC Price Proposal.

1.5 Exclusivity: During the term of this Agreement, the SFA grants the FSMC the exclusive right to operate the HPS nonprofit food service Program on or from the SFA facilities.

a) Non-Food Service Functions. SFA reserves the right to use SFA's facilities to sell or dispense food and beverages after regularly scheduled meal service and preparation periods, provided such use does not interfere with Food Service operations. SFA shall return the facilities and equipment to FSMC in clean and orderly condition after each use. At any time when SFA school foodservice facilities are being used, an employee of the FSMC must be present to oversee the use of such facilities.

ARTICLE II - RELATIONSHIP OF THE PARTIES AND SCOPE OF SERVICES

2.1 Independent Contractor. The FSMC shall be an independent contractor and shall retain control over its employees and agents. Nothing in this Agreement shall be deemed to create a partnership, agency, joint venture or landlord-tenant relationship between the SFA and the FSMC.

2.2 FSMC Responsibilities.

- a) The FSMC shall maintain such records as the SFA will need to support its Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year, for inspection and audit by representatives of the SFA, State Agency (SA), United States Department of Agriculture (USDA) and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit. [**Recordkeeping, 7 CFR Part 3016.42 and Part 3019.53 and § 210.16(c)(1)**]
- b) The FSMC shall, to the maximum extent possible, utilize USDA donated foods made available by the SFA solely for the purpose of providing benefits for the SFA's food service operation. [**7 CFR § 210.16(a)(6)**]
- c) The FSMC shall have all required State and local health certification for any facility outside the school in which it proposes to prepare meals, and the FSMC shall maintain this health certification for the duration of the Agreement. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facilities. [**7 CFR § 210.16(c)(2)**]
- d) The FSMC shall prepare and serve a variety of appetizing, high quality, wholesome, and nutritious meals and a la carte items for the SFA's students, employees, and visitors in accordance with the terms and conditions of this Agreement. The FSMC agrees that it will perform the work described in this Agreement in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal, state and local regulatory body and governmental agency.
- e) The FSMC agrees to meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this Agreement.
- f) The FSMC agrees to assume full responsibility for the payment of all contributions, assessments, both state and federal, including, but not limited to, wages, pension benefits, federal, state and local employment taxes, unemployment taxes, social security, and worker's compensation costs, as to all employees engaged by it in the performance of this Agreement.
- g) The FSMC agrees to furnish the SFA, upon execution of this Agreement, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.

- h) The FSMC shall present a verbal and written Program update to the School Committee no less than annually.
- i) FSMC shall comply with all applicable procurement standards set by Federal, State and local laws, regulations and policy.
- j) FSMC shall maintain records including but not limited to: records to support SFA's Claim for Reimbursement; cost records, including but not limited to source documentation, supporting charges for contractually approved costs (i.e., reasonable and necessary); cost breakdown of management fees, if applicable, to demonstrate there is no double billing of charges; time and attendance records for labor costs billed; breakdown of special function costs, if applicable; meal count records *for* meals not covered by the Claim for Reimbursement, e.g., adult meals, a la carte, etc.; and revenue records broken down by source, type and category of meal or food service.
- k) FSMC must report Claim for Reimbursement information to SFA promptly at the end of each month, but no more than five (5) working days after the close of the preceding month.
- l) FSMC must maintain all records pertaining to the Foodservice Program at the SFA and at its offices in Holyoke while the contract is in effect.
- m) FSMC shall purchase and pay for, as an Operating Expense, all food, supplies, and services utilized in SFA's nonprofit Program. All food and related supplies purchased on behalf of SFA shall be kept separate and apart from USDA donated commodities, and title thereto shall remain with FSMC at all times. All purchases shall be made in the name of FSMC.
- n) FSMC must ensure that all procurement transactions comply with all applicable procurement standards set by Federal and State regulations.
- o) The prices paid by FSMC for food, supplies, services, etc. must be reasonable and necessary and FSMC shall periodically provide documentation that these prices charged for food, supplies, services, etc. are reasonable and necessary.
- p) Any silence, absence, or omission from the Agreement or RFP concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by SFA are to be used.
- q) Purchase Specifications: FSMC shall comply with all purchase specifications set forth in the RFP (*RFP, section 3.2.4*).
- r) FSMC shall provide the SFA access at all times to the areas used by FSMC.
- s) PROGRAM OBJECTIVES: FSMC will comply with the following to meet the City's objectives to provide a nutritionally sound, appealing breakfast, lunch and snack program and dinner to the students and staff of the City in a professional, financially sound, and responsible manner.

- i) Meals are to be provided under the Food Based Menu Planning System as outlined by USDA regulations.
- ii) FSMC will participate in and provide nutritional education programs for all levels of students. Such programs shall include, but not be limited to, classroom presentations, educational pamphlets, nutritional promotional events etc.
- iii) The Program shall be operated in such a manner so as to not require additional financial support from the City. FSMC shall guarantee a return of Five Hundred and Fifty Thousand Dollars and Zero Cents (\$550,000.00) to the non-profit school foodservice account for each year of the contract, as described in the RFP (*RFP, section 3.2.10*) and this Agreement. This guarantee is not contingent upon a multi-year contract duration.
- iv) FSMC shall be responsible for housekeeping and sanitation (including restrooms) in food preparation, storage, serving areas, tables and chairs in dining areas, and shall clean and sanitize dishes, pots, pans, utensils, equipment and similar items.
- t) During the first year of the Agreement, FSMC agrees to work with the SFA to prepare a five (5) year equipment repair and replacement plan that will improve upon the condition of the school kitchens and foodservice facilities and bring the school kitchens and foodservice facilities up to the standard necessary for efficient operation of the Program.
- u) *Intentionally deleted.*
- v) Inventory: Prior to the commencement of operations under this Agreement, FSMC and SFA shall jointly inventory all useable food and supplies ("Opening Inventory") at SFA's purchase price. Such Opening Inventory will be purchased by FSMC at the beginning of the contract. FSMC shall purchase and own inventories of food, beverages, goods, merchandise and supplies. The inventories, as they are used, shall be charged as Operating Expenses to the program. Upon termination of the Agreement, an ending inventory shall be taken and SFA shall purchase from FSMC any remaining useable inventories for amounts at FSMC's then current invoice price.
- w) Inspections and Audits: FSMC agrees to cooperate with State and local audits as they may occur. FSMC shall notify the SFA prior to the start of any inspection. FSMC shall notify SFA immediately, in writing, of any notices of violations, which are received in connection with an inspection. FSMC will include action plans to correct conditions causing the violations in this notice.
- x) Marketing of the Food Service Program
 - (i) Timely, accurate and complete communication and dissemination of information is essential. A creative, well designed and well executed marketing plan is critical to the success of the food service program. FSMC shall utilize the marketing policy and philosophy and descriptions of programs provided in its Proposal, including the suggested internal marketing plan for City. FSMC will provide promotional calendars describing holiday, seasonal and celebratory events scheduled a minimum of once per month and a schedule of weekly mini promotions.

(ii) FSMC's promotional materials must address the needs of disabled customers, i.e. food displays, signage, special services assistance, etc.

(iii) FSMC will consult the SFA's Food Committee to demonstrate the flow of information between customers and FSMC. The Food Committee will assist, advise, counsel and otherwise work closely with FSMC to maximize the quality and value of the food service program. FSMC shall have Food Committee meetings at dates and times agreed upon by FSMC and SFA Food Committee members. FSMC shall cooperate with SFA in the establishment of a Food Committee composed of parents, teachers, students and a FSMC representative to assist in planning menus. FSMC shall take customer surveys in conjunction with City representatives, at least annually. Food preference and service quality are two of the types of surveys to be utilized a minimum of once a year. The City representative is to receive a summary of the survey within one week after its completion.

- y) FSMC shall, at its own expense, obtain suitable commissary, warehouse and office facilities, including furniture and equipment. Such costs shall be charged as an Operating Expense of the Program.
- z) FSMC shall establish internal controls that ensure the accuracy of meal counts prior to the submission of the monthly Claim for Reimbursement.

2.3 SFA - Responsibilities.

The SFA shall:

- a) Ensure that the food service operation is in conformance with the SFA's Agreement under the Program. [7 CFR § 210.16(a)(2)]
- b) Monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations. [7 CFR § 210.16(a)(3)]
- c) Retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals. [7 CFR § 210.16(a)(4)]
- d) Retain signature authority on the State Agency-School Food Authority agreement, free and reduced application process, price policy statement, Monthly Claims for Reimbursement, and Commodity Order Forms. [7 CFR § 210.16(a)(5)]
- e) Retain title to all USDA donated foods; and ensure that all USDA donated foods made available to the food service management company, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. All refunds and rebates received from processors must be retained by the SFA. [7 CFR § 210.16(a)(6)]
- f) Maintain all applicable health certification and assure that all State and local regulations are being met by the FSMC when preparing or serving meals at a SFA facility. [7 CFR § 210.16(a)(7)]

- g) Establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning. [7 CFR § 210.16(a)(8)]
- h) Make reasonable regulations with regard to all matters under its supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given;
- i) Retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation and retain control for establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals. [7 CFR 210.16(a)(4)]
- j) Retain signature authority and be responsible for all contractual agreements entered into in connection with the school nutrition program. [7 CFR § 210.21];
- k) Ensure resolution of program review and audit findings. [7 CFR § 210.9(b)(17)].
- l) Require the FSMC to provide a 21-day cycle menu. [7 CFR § 210.16 (b)(1)]
- m) Provide detailed specifications for each food component or menu item specified in 7 CFR Part 210, and include these specifications in the IFB or RFP. [7 CFR § 210.16(c)(3)] *See RFP, section 3.2.3 and 3.2.4.*
- n) Maintain applicable health certification and be assured that the FSMC is meeting all state and local regulations in preparing or serving meals at the SFA facilities. [7 CFR § 210.16(a)(7)]
- o) Develop, distribute, and collect the parent letter and application for free and reduced price meals. [7 CFR § 245.6] *(The Program is currently under CEP so there are no applications to distribute and collect. However should that change during the term of this Agreement, the SFA shall be responsible for these tasks.)*
- p) Determine eligibility and verify applications for free and reduced price meals benefits and conduct any hearings related to such determinations. [7 CFR § 245.6, 6a, 7, 10] *(The Program is currently under CEP so there are no eligibility determinations to be made, or applications to verify. However should that change during the term of this Agreement, the SFA shall be responsible for these tasks.)*
- q) Assure that the maximum amount of USDA donated foods are received and utilized by the FSMC. [7 CFR § 210.9(b)(15)].
- r) Maintain responsibility for procuring processing agreements, overseeing the FSMC's use of private storage facilities, and any other aspect of financial management relating to commodities. [7 CFR § 250.15] .
- s) Furnish and maintain all necessary kitchen equipment to satisfactorily operate the Program, subject to FSMC's obligations under this Agreement to procure certain equipment and vehicles. An inventory of equipment shall be conducted jointly by the SFA and FSMC upon commencement of operations under the Program, and annually thereafter in the month of

June during any renewal period.

- t) Provide and maintain adequate fire extinguishing equipment for the Premises, shall provide necessary pest control, and shall be responsible for removal of refuse from the Premises. FSMC shall place trash in an area designated by the SFA.
- u) Provide at the SFA facilities: electricity, gas, water, heat and light to the School Food Service Program as the City determines is needed, excluding the FSMC's office space.
- v) Provide maintenance personnel and outside maintenance services, parts and supplies required to properly maintain the SFA facilities and equipment, except to the extent FSMC is required to provide the same under this Agreement.
- w) Subject to FSMC's responsibilities to provide equipment under this Agreement, SFA shall furnish necessary Food Service equipment and Smallwares. Subject to FSMC's responsibility to maintain the equipment on a daily basis, the Premises and equipment provided by SFA for use in the Food Service operation shall be in good condition and maintained by SFA to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health (including, without limitation, OSHA regulations). SFA further agrees that any modifications or alterations to the workplace or the SFA facilities (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of SFA and shall be at the SFA's expense.

ARTICLE III - FOOD SERVICE PROGRAM

- 3.1 SFA Facilities. The FSMC shall prepare and serve meals for the schools listed in the RFP, Appendix B. The SFA and the FSMC may agree to add other locations.
- 3.2 Calendar. All meals will be provided in accordance with the approved calendar, attached to the RFP as Appendix A. For the first twenty-one (21) days of food service, the FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the SFA. Changes thereafter may only be made with approval of the SFA. [7 CFR § 210.16 (b)(1)]
- 3.3 Meal Program. The FSMC shall provide nutritious, high-quality breakfasts, lunches, dinners, snacks, milk service, and a la carte food, in accordance with the following terms:
 - a) In order to offer a la carte food service, the FSMC must also offer free, reduced price and paid reimbursable meals to all eligible children. [7 CFR § 210.16(a)]
 - b) All reimbursable lunches, breakfasts and snacks shall meet the qualifications for USDA reimbursement as described in 7 CFR § 210.10, 220.8, 225.16, and 226.20, et seq.
 - c) All reimbursable milks shall meet the qualifications for USDA reimbursement under the Special Milk Program as described in 7 CFR § 215.
 - d) The SFA shall administer the application process for all free and reduced price meals, and shall establish and notify parents and guardians of program criteria for eligible students. Both the SFA and the FSMC shall be responsible for protecting the anonymity of students

receiving free or reduced price meals. *(The Program is currently under CEP so there is no application process. However should that change during the term of this Agreement, the SFA shall be responsible for these tasks.)*

- e) The FSMC shall collect gross sale receipts, on behalf of the SFA, for meals and a la carte items. Gross cash receipts shall be turned over to the SFA or deposited in the SFA's account on a daily basis.
 - f) The SFA and FSMC shall purchase, to the maximum extent practicable, domestic commodities or products for use in meals served in the NSLP in compliance with the Buy American Provision under **7 CFR 210.21(d)(2) and 7 CFR Part 250**.
- 3.4 Nutrition Awareness Programs. In cooperation with the SFA, the FSMC shall conduct on-going nutrition awareness programs for students, teachers, parents, and other interested parties.
- 3.5 Special Diets. The FSMC shall, in accordance with SFA policy, supply special diets for students where medically necessary and when prescribed by a licensed physician.
- 3.6 Advisory Board. The FSMC shall cooperate with the SFA's Advisory Board, consisting of students, parents, SFA staff, and a FSMC representative in developing menus and other food service programs.
- 3.7 Catering. Upon request by the SFA, the FSMC shall provide catered food service at times and prices mutually agreed upon. The SFA may, if a price cannot be agreed upon or the FSMC cannot provide the service, obtain outside catering services. The FSMC shall submit catering invoices by the end of the current month. Costs of catered functions shall not be supported by the nonprofit foodservice account funds. The FSMC shall provide the SFA with copies of invoices and an invoice control log within ten (10) days after the end of each month.
- 3.8 Environmental Protection Agency Compliance. In performance of this Agreement, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and EPA Regulations 40 CFR Part 15, et seq. Environmental violations shall be reported to the United States Department of Agriculture and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's "List of Violating Facilities." **[Part 3016.36(i)]**.
- 3.9 Energy Policy and Conservation Act Compliance. 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. **[Part 3016.36(i)]**.
- 3.10 Contract Work Hours and Safety Standards Act Compliance. In performance of this agreement, and as employer for all management food service employees, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act. **[Part 3016.36(i)]**.
- 3.11 Debarment Certification. The FSMC shall complete and submit to the SFA the United States Department of Agriculture (USDA) Certification Regarding Debarment. The certification must accompany each and every renewal of the Agreement. **[7 CFR § 3017]**.

3.12 Lobbying. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities to the SFA. These certifications must accompany each and every renewal of the Agreement. [7 CFR § 3018].

3.13 Donated Foods (Additional language required as a result of the Final Rule effective November 6, 2008, 7 CFR 250 Management of Donated Foods in Child Nutrition Programs, The Nutrition Services Incentive Program, and Charitable Institutions.).

A. The FSMC will provide the following services in relation to commodity foods:

1. Preparing and serving meals;
2. Ordering or selection of donated foods, in coordination with the SFA in accordance with **7 CFR 250.50 (d)(2) and 250.52**;
3. Storage and inventory management of donated foods in accordance with **7 CFR 250.52**; and
4. Payment of processing fees and or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of donated foods in processed end products to the SFA, in accordance with **subpart C of 7 CFR 250**.

B. The FSMC must credit the SFA for the value of all donated foods received for use in the SFA's meals service in a school year (including both entitlement and bonus foods), including the value of donated 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 the donated food value in processed end products on to the SFA.

C. The FSMC shall credit for donated foods by disclosure, i.e., the FSMC shall credit the SFA for the value of donated foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of donated foods for the billing period. Crediting by disclosure does not affect the requirement that the FSMC shall only bill the SFA for net allowable costs. The FSMC shall use the USDA's [November 15th] list of commodity food values to report the value of donated foods in its disclosure of the value of donated foods to the SFA on its invoices.

D. Use of Donated Foods. In accordance with 7CFR 250.51(d), the FSMC must use all donated ground beef, donated ground pork, and all processed end products, in the SFA's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, or U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service. **Storage and Inventory Management** The FSMC must meet the general requirements for the storage and inventory management of donated foods in 7CFR 250.14(b). In accordance with 7CFR 250.52(a), the FSMC may store and inventory donated foods together with foods it has purchased commercially for the SFA's use, unless this is specifically prohibited in its contract. It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7CFR250.51(d). Additionally, under cost-reimbursable contracts, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for donated foods.

- E. Recordkeeping and Review Requirements. The SFA and FSMC must maintain records of receipt of donated foods and processed end products, or crediting for the value of donated foods, and other records relating to donated foods, in accordance with 7CFR 250.54. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year including, in accordance with requirements in 7CFR 250.51(a), the value of donated foods contained in processed end products. The FSMC must return all unused donated ground beef, donated ground pork, processed end products and (at the SFA's discretion) return all unused donated foods in accordance with 7CFR 250.52(c) when a contract terminates, is not extended or renewed.
- F. The SFA must ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's meal service in the school year. The FSMC agrees to cooperate and provide information reasonably requested by the SFA.
- G. The FSMC must ensure compliance with the requirements of **subpart C of 7 CFR part 250** and with the provisions of the distributing and/or the SFA's processing agreements in the procurement of processed end products on behalf of the SFA, and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.
- H. The FSMC shall not enter into the processing agreement with the processor required in **subpart C of 7 CFR 250**.
- I. The distributing agency, subdistributing agency, or SFA, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods.
- J. The FSMC shall will maintain records to document its compliance with **7 CFR 250.54(b)**.
- K. Any extension or renewal of the Agreement is contingent upon fulfillment of all provisions in this Agreement relating to donated foods.
- L. The FSMC must maintain the following records relating to the use of donated foods:
1. The donated foods and processed end products received from or on behalf of the SFA for use in the SFA's food service operations;
 2. Documentation that it has credited the SFA for the value of all donated foods received for use in the SFA's food service operations in the school year, including, in accordance with the requirements in **7 CFR 250.51(a)**, the value of donated foods contained in processed end products; and
 3. Documentation of its procurement of processed end products on behalf of the SFA, as applicable.
- M. The SFA shall ensure that the FSMC is in compliance with the requirements of this section through its monitoring of the food service operation, as required in **7 CFR parts 210, 225,**

or 226, as applicable.

- N. The SFA shall conduct a reconciliation at least annually (and upon termination of the Agreement) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of donated foods contained in processed end products.

ARTICLE IV - MANAGEMENT AND PERSONNEL

- 4.1 FSMC Management and Professional Employees. The FSMC shall provide sufficient and qualified management and professional employees to manage the food service operations and supervise all employees employed therein, as required by the RFP.
- 4.2 Non-Management Employees: All non-management food service employees shall be employees of the SFA or FSMC.
- 4.3 Productivity: The FSMC shall provide adequate full and part time staff for the efficient operation of the program. For schools which prepare food on-site, productivity, in terms of Meals Served Per Worker Hour (on-site personnel only) shall meet or exceed the requirements set forth in the RFP. (*RFP, section 3.2.1*)
- 4.4 Payroll and Taxes. The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including, but not limited to, any income, social security, and unemployment taxes and workers' compensation payments.
- 4.5 Workers' Compensation Insurance: The FSMC shall procure Workers' Compensation Insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the SFA.
- 4.6 Nondiscrimination: The SFA and the FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations. [41 CFR Part 60] [Part 3016.36(i)]

FSMC is an equal opportunity employer and is legally responsible for all of its employment decisions affecting its own employees.

FSMC affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, Executive Order 11246, as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act; and any additions or amendments thereto.

During the performance of this Agreement, FSMC agrees it will not discriminate against any client or applicant for services because of race, color, religion, sex, age, sexual orientation,

disability, family status or national origin. FSMC will take affirmative action to ensure that clients, applicants and employees are treated without regard to their race, color, religion, sex, age, sexual orientation, disability, family status or national origin. In the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex, age, sexual orientation, political beliefs, physical disability or national origin, discriminate against anyone who is qualified and available to perform the work to which the employment relates.

In the event of FSMC's non-compliance with the non-discrimination clauses above, or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and FSMC may be declared ineligible for further contracts with the SFA.

Both the SFA and FSMC agree to the following requirements as outlined in the USDA Nondiscrimination Statement below:

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

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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

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

This institution is an equal opportunity provider.

- 4.7 CORI and Fingerprint-Based Criminal Background Check Requirements: The FSMC shall require, and shall be responsible for obtaining, for any of its employees, agents and/or subcontractors who may have direct and unmonitored contact with any HPS students, on school grounds, criminal offender record information (“CORI”) checks, and state and national fingerprint-based criminal background checks, pursuant to Mass. Gen. Laws ch. 71, § 38R. Any determination of whether a Contractor’s employee, agent or subcontractor may have direct and unmonitored contact with HPS students will be made consistent with the HPS CORI policy, which is set forth on the HPS website at: <<http://www.HPS.Holyoke.ma.us/webContent/Policies/CORI%20Policy.pdf>.> The FSMC shall provide all necessary forms and/or documentation for such employees, agents or subcontractors to the SFA.
- 4.8 SFA reserves the right, upon written request, to request that FSMC remove any employee working in the Program who is not acceptable to the SFA, and such employee shall be immediately replaced with an employee acceptable to SFA, so long as acceding to such request will not violate applicable federal or state employment laws.
- 4.9 FSMC agrees to interview and hire as many current food service employees as meet FSMC’s employment requirements as practicable if employees are moved to FSMC payroll.
- 4.10 FSMC also agrees to interview and hire as many Holyoke residents for open positions that meet FSMC’s employment requirements as practicable.
- 4.11 Key Personnel: FSMC must submit a list of names of key personnel for the Program. FSMC must provide a management table of organization including at a minimum: (1) general manager, (1) operations manager or equivalent, (1) executive chef, (1) accountability supervisor, It is requested that one member of the management team be a Registered Dietitian or Nutritionist. Exclusive to the district.
- 4.11.1. General Manager: The General Manager assigned by FSMC to the Food Service Program must be approved by the SFA and must be assigned to the SFA Food Service program for the entire 12 month period of this Agreement. The General Manager minimally shall have a bachelor’s degree in food service management or in a related major in hospitality management and five (5) years of school food service management experience. The General Manager must also have CEP experience. City reserves the right to approve the proposed candidate for this position.
- 4.11.2. All other supervisory personnel shall have a minimum of three (3) years of supervisory experience prior to working in the Program.
- 4.11.3. The unit management and supervisory staff must be highly communicative, personable and responsive to the needs of SFA personnel.
- 4.11.4.. All managers, supervisors and cooks shall be certified in the Serv-Safe Sanitation Course within six months of commencement of operations of the Program.

4.11.5. Any changes in the number of supervisory staff must be mutually agreed upon by the City and FSMC.

4.11.6. FSMC's management/supervisory personnel will be in the service and dining room areas at least 90% of the time during service periods for all meals served during the term of the contract.

4.12 Employee Policies: FSMC must submit a copy of its employee rules and regulations (employee handbook or equivalent) to SFA. FSMC shall provide SFA with true and correct copies of FSMC's corporate policy addressing employee health and sickness and use of drugs and alcohol. FSMC shall be required to certify that they operate a drug free workplace consistent with federal, state and local regulations. FSMC must describe its procedures, if any, for pre-employment and post-employment drug and medical testing.

4.13 FSMC employees must comply with all City and SFA rules and regulations. Employees will remain in assigned working areas during working hours. SFA shall provide FSMC a written copy of such rules and regulations so that FSMC may comply.

4.14 FSMC personnel working at City are required to wear appropriate uniforms (to be approved by the City), including name tags, hats, hairnets or other approved hair restraints, shoes, gloves etc.

4.15 FSMC shall bear financial responsibility for vandalism or loss attributable to acts or omissions of its employees on all equipment and property.

4.16 FSMC shall promptly notify City of any anticipated labor, employee or supplier problem or any other circumstance that could adversely affect the food service operation. Services shall be provided continuously during any labor disturbance or strike by FSMC's employees. Services shall not be provided during any labor disturbance or strike by City's employees in the event that a labor action causes a school closure.

4.17 Employee Staffing: Staffing by FSMC shall be adequate to perform the services herein.

4.18 Employee Training and Development: FSMC shall adequately and properly train its personnel to perform assigned tasks. The consistency and quality of staff performance must be addressed on a semiannual basis. FSMC shall manage, train and develop its employees in accordance with the policies and practices submitted with its Proposal, including but not be limited to:

- a. programs for training and development of management and non-supervisory personnel initially and on a continuing basis at SFA.
- b. systems and procedures designed to ensure that the highest level of sanitation, safety (food and facilities) and customer service are provided to SFA.

4.19 The SFA reserves the right to initially and on a continuing basis meet and provide feedback to the FSMC on the performance of all FSMC food service employees. FSMC employees deemed not acceptable to the City due to performance and/or qualification issues or any lawful reasons are to be immediately replaced.

4.20 Personnel Obligations: FSMC shall be solely responsible for all personnel actions and all claims

arising out of injuries occurring on the job with respect to its employees. FSMC shall withhold 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 worker's compensation costs and shall file all required documents and forms.

4.21 CONFLICT OF INTEREST: FSMC covenants that it does not have any interest, direct or indirect, which will conflict in any manner or degree with the performance of the services hereunder.

ARTICLE V - INVENTORIES, FACILITIES, EQUIPMENT, AND MAINTENANCE

5.1 Inventories of Food and Supplies: The SFA and FSMC shall conduct a joint inventory of existing food and operational supplies at both the beginning and the end of this Agreement. If the ending inventory is less than the value of the beginning inventory the FSMC will credit the SFA for the difference. The cost of food and operational supplies ordered by FSMC on behalf of the SFA in performance of this agreement shall be paid for by the FSMC and the FSMC shall then be reimbursed for those costs incurred. The inventory of food and operational supplies shall remain the SFA's property.

5.2 The SFA and the FSMC shall inventory the equipment and commodities owned by the SFA at the beginning of the Agreement year, including, but not limited to, consumable and non-consumable flatware, trays, china, glassware and food. The FSMC shall be responsible for reimbursing the SFA for all shortages noted on the year-end inventory.

5.3 Office Facilities: The SFA and FSMC shall procure suitable office facilities in the City that meets the needs of the Program, including furniture and equipment, for use by the FSMC in performance of this Agreement. The FSMC shall take reasonable care of the office facilities and equipment.

5.3.1 This space intentionally blank

5.4 Sanitation: The FSMC shall be responsible for usual and customary cleaning and sanitation of the SFA's food service facilities.

a) The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items. The SFA shall designate a refuse collection area and the FSMC shall be responsible for transporting refuse to the designated refuse collection area.

b) The SFA shall be responsible for the required cleaning and maintenance of dining areas, as well as periodic cleaning of all ceilings, ceiling fixtures, air ducts, and hood vent systems (as per local ordinance). The SFA shall also provide and maintain adequate fire extinguishing equipment for food service areas, provide necessary pest control, and shall be responsible for the removal of refuse from the designated refuse collection area.

c) If the SFA is unable to perform any of its responsibilities described in subparagraph b) above, the FSMC may, with the written approval of the SFA, temporarily assume those

responsibilities and shall bill the SFA for any costs incurred.

- 5.5 Maintenance: The SFA shall provide, at the SFA's expense, maintenance personnel and outside maintenance services, parts, and supplies required to properly maintain the food service facilities and equipment at the schools. This does not apply to the FSMC's warehouse and offices.
- 5.6 Condition of Facilities and Equipment: The SFA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this Agreement shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the SFA's premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the SFA of such notification.
- 5.7 Transportation Equipment and Vehicles: The SFA shall provide transportation vehicles and equipment to be used in the Program. Maintenance, fuel, insurance, and equipment for transportation shall be the sole responsibility of the SFA.
- 5.8 Nonconforming Facilities and Equipment: Each party shall, at no cost to the other, make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of that party's premises or owned equipment which violate applicable building, sanitation, health, or safety law, ordinance, rule or regulation.

ARTICLE VI - FINANCIAL AND PAYMENT TERMS

- 6.1 Billing for Reimbursements, and Administrative and Management Fee (hereafter called "Management Fee"). The FSMC must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. Unallowable costs cannot be paid out of the nonprofit food service account. The FSMC shall submit supporting documents and invoice to the SFA monthly for the following: Operating Expenses and management fee.
 - a) The invoiced amounts to FSMC of goods and services, including food, beverages, merchandise, and supplies. Operating Expenses shall be net of any discounts, rebates and other credits obtained from local vendors, suppliers, or distributors for goods procured solely for SFA's account. All discounts, rebates and other applicable credits accruing to or received by FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to SFA, including those obtained from vendors, suppliers, manufacturers or distribution companies, and FSMC's regional or national purchasing or distribution arrangements, shall be credited to the SFA, and the amount of such credit shall be indicated on the monthly invoices submitted to SFA by FSMC. In any event, however, the invoiced amounts of such goods shall be competitive, on an aggregate basis, with prices at which such goods and services can be

purchased in the geographic area of the Food Service operations;

Labor, including salaries (including bonuses, if any), wages, taxes, benefits, and retirement plans;

Other actual and direct costs, expenses, and certain agreed upon Charges made pursuant to the terms of this Agreement including, but not limited to: amortization or depreciation of equipment, any Investment decor, signage, and other items purchased on behalf of the Food Service operation; out-of-pocket travel and related expenses for training of employees assigned to the Food Service operation, sales, use, and other taxes related to the purchases made for Food Service (other than taxes collected and remitted by FSMC to a taxing authority); costs of licenses, permits, information systems, software and software maintenance, armored car services, marketing and promotional or proprietary materials, uniforms and linen, the cost of any required or necessary background checks, decorations, overnight delivery, if necessary, Smallwares, minor equipment, incidental daily register shortages shall be offset by incidental overages and reconciled annually (excluding theft), and other direct and actual services related to the Food Service operation. Provided however, that Operating Expenses shall not include any cost, expense or charge which is part of the FSMC's Management Fee.

Charges shall include charges for workers' compensation and general liability insurance based on the average manual rates for such insurance in the geographic area of the Premises and other insurance maintained pursuant to the Agreement.

b) Management Fee: The FSMC's Management Fee shall be calculated by a charge of **\$0.1973** per eligible meal/meal equivalent served by the FSMC. For any renewal year, the FSMC's Management Fee shall increase by the amount of the Consumer Price Index listed in the RFP, over the prior contract year. (See FSMC's Price Proposal). The following functions are the FSMC's responsibility, and will be included in the Management Fee:

- Corporate supervision
- Financial reporting and analysis
- Field auditing
- Marketing Assistance
- Purchasing administration

Payment of the FSMC management fee is subject to the availability of sufficient funds in the non-profit school food service account, which is funded by reimbursements received by the SFA from the School Lunch Program, and revenues from other sales. In the event the FSMC's costs exceed the funds received in the account, those costs are the sole responsibility of the FSMC.

There is no financial incentive as part of this Agreement.

c) Per Meal Defined:

- For management fee purposes, meals are defined on a fixed price based on the following: 1 lunch=1 meal, 2 breakfasts=1 meal, 1 dinner=1 meal and 4 snacks=1 meal..

- For management fee purposes, the number of meal equivalents shall be determined by dividing the total of all sales except reimbursable meal sales (including cash for adult meals, a la carte meals, and snack bar sales), by the free reimbursement rate, plus the per meal value of commodities of the current school year.

- All a la carte revenue shall include adult meals and a la carte sales to students and adults. If applicable, include revenue from vending machines, catering and all other miscellaneous income as part of a la carte revenue.

d) Expenses paid by the FSMC and not charged to the SFA or the food service operation and are unallowable include:

- Reports filed to the State
- Corporate income tax

6.2 Invoice Due Date: The FSMC shall submit monthly invoices with supporting documentation to the SFA within fifteen (15) days of month closing. The FSMC will be notified promptly of any invoice that does not pass audit. The HPS shall make payment to the FSMC within sixty (60) days after the submission of an invoice detailing the proposer's Operating Expenses plus the management fee for each month of operations. The SFA shall pay all amounts when due, but if the SFA does not make a payment when due, no interest shall be charged by the FSMC on that past due receivable, pursuant to 7 CFR § 210.16(c). Payment is contingent on the receipt and availability of sufficient funds in the non-profit food service account.

6.3 ACCOUNTABILITY: The FSMC is responsible for instituting a total accounting and accountability system. FSMC must have a financial management plan indicating policies, procedures and methods for recommended changes to budgets, price and portion lists, etc. Such procedures and methods must include how FSMC tracks results, reports budget to actual variances on a monthly basis and follows up to correct those variances as soon as possible. Open book accounting, accessible to SFA, is required.

6.4 Operating Statements: The FSMC shall maintain records including, but not limited to, invoices and receipts and shall submit monthly operating statements to the SFA by the tenth (10th) calendar day succeeding the month in which services were rendered. This statement shall reflect all activity for the previous calendar month. Participation records shall be submitted no later than fifteen (15) working days succeeding the month in which services were rendered.

6.5 Renegotiation of Financial Terms: The renegotiation of price terms under this Agreement is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of the parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this agreement are based, then those price terms so affected may be renegotiated by the parties. Renegotiation of price terms under such conditions must be mutual, and any changes in price terms must be agreed upon by both parties, and contained in a written contract amendment signed by all parties to this Agreement. 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 agreement. Whenever such conditions occur, the party seeking to renegotiate shall provide written notice to the other party

within 30 days with a specific proposal for renegotiation of the financial terms, and the grounds therefore. The parties may extend the time for notice upon mutual agreement.

6.6. Appropriation of Funds: Every payment obligation of the SFA under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation in any fiscal year (July 1st to June 30th). If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the SFA at the end of the period for which funds are available. No liability shall accrue to the SFA in the event this provision is exercised, and the SFA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

6.7 Allowable costs: Allowable costs will be paid from the nonprofit school food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority. FSMC shall maintain records to support allowable expenses appearing on the monthly operating statement according to expense categories.

The FSMC's determination of its allowable costs must be made in compliance with the applicable USDA and program regulations (**7 CFR parts 210, 215, 220, 3015, 3016 and 3019**, as applicable) and Office of Management and Budget Cost Circulars (A-87 cost Principles for State, Local Governments and Indian Tribal Governments, or A-122 Cost Principles for Non-profit Organizations, as applicable);

6.8 Discounts, Rebates and Other Applicable Credits. **CFR §210.21(iv)** The FSMC must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually.

7CFR §210.21(v) Company has identified the method by which it will report discounts, rebates and other applicable credits allocable to the the method here:

The FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, the State agency, or the United States Department of Agriculture. The FSMC shall return the value of all discounts, rebates and other applicable credits allocable to the contract to the SFA.

6.9 Guaranteed Annual Return: The SFA and the FSMC shall work together to ensure a financially sound and well-run operation. The FSMC shall guarantee that the nonprofit food service account will achieve a guaranteed annual financial return in each year of the contract, including any renewal year, in the amount of Five Hundred Fifty Thousand (\$550,000), as set forth in the FSMC's Price Proposal, which is incorporated herein by reference. This amount shall be the net of revenues over all Operating Expenses incurred by the FSMC and management fee. If the annual financial return for the Food Service Program falls short of the aforementioned amount, FSMC shall pay the difference to SFA ("Shortfall").

6.10 **Guarantee Assumptions.** Financial terms of the Agreement are based upon the following assumptions. If there is a change in conditions, including, without limitation, changes to the following assumptions, the parties agree to enter into negotiations concerning the impact of such changes, and the financial terms of the Agreement, including any guarantee, shall be adjusted accordingly.

- A. 180 full operating days
- B. 95% ADA (Average Daily Attendance of no less than 5,527)
- C. SFA labor charged to the Food Service program shall not exceed \$2,200,000.00

ARTICLE VII GENERAL TERMS AND CONDITIONS

7.1 **Compliance With 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 of the food service operations and shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, for the FSMC's compliance and procurement efforts. The FSMC shall conduct program operations in accordance with **7 CFR Parts 210** (National School Lunch Program), **220** (School Breakfast Program), **225** (Summer Food Service Program), **226** (Child and Adult Care Food Program), **245** and **250**, and FCS instructions and policy.

7.2 **National School Lunch Program:** In order to assist the SFA's participation in the National School Lunch Program:

- A. Any federally donated commodities received by the SFA and made available to the FSMC shall be used only for the benefit of the SFA's food service operation. Any commodity processing contracts shall be established by the SFA. All goods, services, and monies received as a result of rebate under a processing contract must be used in the SFA's nonprofit food service. [**7 CFR § 210.16(a)(6) and 250.15**] The FSMC shall maintain a perpetual inventory record of donated commodities.

- B. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA, or do not otherwise meet the requirements of this Agreement. [7 CFR § 210.16 (c)(3).] No deduction in payment shall be made by the SFA unless the SFA notifies the FSMC in writing within 48 hours of the meal service for which the deduction is to be made, specifying the number of meals for which a deduction is to be made and describing the reasons for the deduction.
- C. The FSMC shall report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA. [7 CFR 210.16(c)(1)].

7.3 **Insurance:** During the term of this Agreement, including any warranty periods, FSMC and its subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by FSMC, its agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect FSMC from liabilities that might arise out of the performance of the work under this Agreement by FSMC, its agents, representatives, employees or subcontractors, and FSMC is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance: FSMC shall provide coverage with limits of liability not less than those stated below:

i) **Commercial General Liability – Occurrence Form:** FSMC shall maintain during the term of the Agreement, for protection of SFA (as set forth below) and FSMC, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than Two Million Dollars (\$2,000,000.00) for each occurrence, including, but not limited to, Personal Injury Liability, Blanket/Broad Form Contractual Liability and Products Liability, covering the operations and activities of FSMC under the Agreement and, shall provide SFA with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days' prior written notice of cancellation.

ii) **Excess Liability:** Follow form excess of General Liability, Automobile Liability, and Employer's Liability

- Aggregate Limit: \$10,000,000 excess of Primary limits

The certificate of insurance for the coverages described above shall include the following additional insured language: "The City shall be named as an additional insured". A copy of the certificate evidencing such coverage is attached to this Agreement as Exhibit A. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice of cancellation to FSMC. Upon FSMC's receipt of such notice FSMC shall provide City, notice of the same.

iii) **Automobile Liability:** Bodily Injury and Property Damage for any owned, hired, and non-

owned vehicles used in the performance of this Agreement

- Combined Single Limit (CSL): \$1,000,000

iv) Worker's Compensation and Employers' Liability

- Statutory Employers' Liability
- Each Accident: \$100,000
- Disease – Each Employee: \$100,000
- Disease – Policy Limit: \$500,000

Each policy shall contain a waiver of subrogation against the City.

B. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

On insurance policies where the City of Holyoke is named as additional insured, the City of Holyoke shall be additional insureds to the full limits of liability purchased by FSMC even if those limits of liability are in excess of those required by this Agreement.

FSMC's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or materially changed except after thirty (30) days prior written notice has been given to the FSMC. Upon FSMC's receipt of such notice FSMC shall provide City, notice of the same. Such notice shall be sent directly to City of Holyoke, Office of Procurement, 536 Dwight Street, Room 405, Holyoke, MA 01040.

D. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Massachusetts and with an "A.M. Best" rating of not less than A. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect FSMC from potential insurer insolvency.

E. Verification of Coverage: FSMC shall furnish the SFA with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance coverage as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement.

F. Subcontractors: FSMC's certificate(s) shall cause its subcontractors to list the City as additional insureds under its policies and FSMC shall cause such subcontractors to furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. SFA Self-Insured Status: The SFA is a self-insured Massachusetts municipal corporation.

The SFA/City provides for all liability including bodily injury, accidental death, general liability, property damage, and hired and owned auto coverage as a self-insured municipal corporation, and claims are payable out of the City's general fund. The Holyoke Public Schools, as a City department, is covered under these same parameters.

- 7.4 Indemnification: FSMC shall assume the defense of (with counsel acceptable to the City of Holyoke) and indemnify and hold harmless the SFA, the City of Holyoke, and their officers, agents and employees (collectively referred to as "Indemnified Parties") from any and all suits, claims liability, loss, and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs which may arise against any of them arising from the negligent or wrongful act or omission of FSMC, its agents or employees in the performance of its obligation under the Agreement. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the SFA's period of liability. The FSMC also accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.

The City does not agree to indemnify FSMC. This clause shall survive termination of the Agreement. In no event shall FSMC's obligation to indemnify the Indemnified parties extend to the negligence, misconduct, or other fault of Indemnified Parties.

- 7.5 Trade Secrets. The FSMC and SFA shall designate any information they consider confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents which it regularly uses in the operation of their business or which they develop independently during the course of this agreement. Information so designated and identified shall be treated as confidential by the FSMC and SFA, to the extent allowed by law, and the FSMC and 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. 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 agreement. Notwithstanding, the Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support. [7 CFR § 3016.34].
- 7.6 Notices. Any notice or communication required or permitted under this agreement shall be in writing and shall be delivered personally or sent by United States registered or certified mail, postage prepaid and return receipt requested, or other recognized overnight delivery service, addressed to the other party as follows:

Notices to the SFA:

Matthew Kuzmeskas
Executive Director of Technology and Operations
Holyoke Public Schools
728 Main Street
Holyoke, MA 01040

With a copy to:

City Solicitor
City of Holyoke Law Dept.
20 Korean Veterans Plaza, Room 204
Holyoke, MA 01040

Notices to the FSMC:

Sodexo Operations, LLC
Attention: Stephen Dunmore
CEO, North America Schools
6030 Woodcreek Drive, Suite B
Downers Grove, Illinois 60515

With a copy to:

Sodexo Operations, LLC
Attention: Law Department
9801 Washingtonian Blvd., Dept. 51/899.74
Gaithersburg, Maryland 20878

Other persons or places may also be designated, in writing, by either of the parties, during the term of this agreement. Notices shall be effective when received. Sent notices will be considered upon actual receipt or two business days hours after they are deposited in the US mail.

7.7 Force Majeure: With the exception of payment obligations for prior performance under this agreement, neither party shall be liable for the failure to perform their respective obligations under this agreement when such failure is caused by fire, explosion, water, act of God, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or other like causes beyond the reasonable control of such party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations as soon as possible.

7.8 Reserved.

7.9 Termination:

a) Termination for Cause: Either party may cancel the Agreement for cause by giving at least sixty (60) days' notice in writing to the other party of its intention to do so. [7 CFR § 210.16 (d)].

i) Cure Period: If a cure or remedy is found for the termination request by mutual agreement of the contracting parties, the termination or non-renewal letter must be withdrawn in writing by the terminating party within the sixty (60) day period as described in paragraph 7.10(a) above. This letter should be counter-signed by the receiving party and the letter should become an amendment to this agreement. [Part 3016.36(i)].

- b) Termination Without Cause: The SFA reserves the right to terminate the Agreement without cause upon at least fifty (50) days written notice of its intention to terminate the Agreement without cause to the FSMC.
 - c) The Massachusetts Department of Elementary and Secondary Education shall be notified immediately of termination action and reason for termination.
- 7.10 Violations for Breach: The right of termination referred to in this Agreement is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the contract and fails to cure such breach within sixty (60) days after receiving written notice of such breach the SFA may elect to pursue any available legal, contractual or administrative remedy or the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$500.00 penalty; (iii) for a third violation, a \$750.00 penalty. For the purposes of the foregoing, a single violation means an event of the same or similar kind, without regard for the duration or number of personnel, equipment, students or meals involved. **[Part 3016.36(i)]**.
- 7.11 Construction and Effect: A waiver of any failure under this Agreement shall neither be construed as, nor constitute a waiver of, any subsequent failure. This Agreement supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendixes referred to herein are made part of this Agreement by the respective references to them. This Agreement may be executed in several counterparts, each of which shall be deemed an original.
- 7.12 Amendments to the Agreement: The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the agreement. The parties must mutually agree, in a written document signed by both parties and attached to this agreement, to amend, add, or delete an Article or Appendix. Any amendment to this agreement shall, upon execution by all parties, become effective at the time specified in the amendment.
- 7.13 **Performance Surety Bond**: A Performance Surety Bond in the amount of One Million Dollars (\$1,000,000.00) shall be provided by FSMC covering the entire term of this Agreement upon the execution of this Agreement, and proof of such Surety shall be attached hereto as Exhibit B. Failure to provide the Performance Surety within the time allowed shall be a basis for termination of the Agreement. FSMC shall maintain the Performance Surety during the entire term of this Agreement. *The Performance Surety must be in the form of a bond payable to and acceptable to the City.* The Performance Surety shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Massachusetts or whose principal office is maintained in this State, and the Performance Surety shall have attached thereto a certified copy of Power of Attorney of the signing official. The Performance Surety shall be provided by a company which has been rated "A- or better" by the A.M. Best Company. The company issuing the Performance Surety must be authorized by the State of Massachusetts to transact business in the state. The City shall have the right to call or draw on the Performance Surety in the Event of Default by FSMC. The Performance Surety shall not limit FSMC's liability to the City. FSMC shall be liable to the City to the extent such

Performance Surety is not sufficient to cover damages incurred by the City as a result of any Event of Default.

ARTICLE VIII MISCELLANEOUS PROVISIONS

- 8.1 If any term or provision of the Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.2 A waiver of any failure to perform under the Agreement shall neither be construed as nor constitute a waiver of any subsequent failure.
- 8.3 The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation.
- 8.4 Any exhibits referred to herein are incorporated herein by reference, provided that in the event of a conflict between the terms of such exhibit or any other document incorporated herein, and the terms of this Agreement, the terms of the Agreement shall govern.
- 8.5 This Agreement and its attachments and other documents specifically incorporated by reference herein contains the entire understanding and agreement of the parties concerning the matters contained herein, and supersedes and replaces any prior or contemporaneous oral or written contracts or communications concerning the matters contained herein.
- 8.6 **Assignment:** Neither the City nor FSMC shall assign any interest in this Agreement or transfer any interest in the same without prior written approval of the other party thereto.
- 8.7 **Applicable Law & Exclusive Forum:**
- A. The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this Agreement.
- B. The parties hereto expressly agree that the sole and exclusive place, status and forum of this Agreement shall be the City of Holyoke, Hampden County, Massachusetts. All actions and legal proceedings which in any way relate to this Agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City of Holyoke, Hampden County, Massachusetts. It is the express intention of the parties to this Agreement that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this Agreement shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Holyoke, Massachusetts or the United States SFA Court sitting in Holyoke, Massachusetts.
- 8.8 **Compliance with the Laws:** In the performance of this Agreement, FSMC shall comply with all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies, and particularly all applicable laws, ordinances, rules and regulations relating to Food

Service sanitation, safety and health.

- 8.9 Taxes: FSMC shall be responsible for collection and remittance of taxes assessed on the Food Service operation, if any.
- 8.10 EXTENT OF AGREEMENT: This Agreement, together with the attachments and exhibits thereto, represent the entire and integrated Agreement between the City/SFA and FSMC and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the City of Holyoke/SFA and the FSMC have caused this Agreement to be signed by their duly authorized representatives as of the date the same is signed by all parties listed below.

[Remainder of page intentionally left blank; signature page to follow.]

**THE FSMC,
SODEXO OPERATIONS, LLC**



By: Michael Grey
Title: Vice President
Date signed: _____ 08/29/2022

**THE SFA,
CITY OF HOLYOKE:**

Lori J. Belanger
Chief Procurement Officer
Date signed: _____

Anthony Soto

Anthony Soto 10/03/2022
Receiver of Schools

Approved as to appropriation:

Tanya Wabowiak

City Auditor 10/11/2022

Approved as to form:

Lisa A. Ball

City Solicitor 10/03/2022

APPROVED:


Joshua A. Garcia

MAYOR : _____

Date signed: 10/11/2022

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input checked="" type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Actions <input checked="" type="checkbox"/> A/B a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Types: <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year <input type="text"/> quarter <input type="text"/> Date of last report <input type="text"/>
4. Name and Address of Reporting Entity: Sodexo Operations, LLC, on behalf of itself and all its subsidiaries. 9801 Washingtonian Blvd., Gaithersburg, Maryland 20878 <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and A Address of Prime: Congressional District, if known: N/A
6. Federal Department/Agency: U.S. Congress Department of Defense USDA	7. Federal Program Name/Description CFDA Number, if applicable: <input type="text"/>	
8. Federal Action Number, if known: Unknown	9. Award Amount, if known: \$ <input type="text"/> Unknown	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): Sodexo Operations, LLC, on behalf of itself and all its subsidiaries. 9801 Washingtonian Blvd., Gaithersburg, Maryland 20878	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): McGlockton, Joan	
(attach Continuation Sheet(s) S F-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): a. <input type="checkbox"/> retainer b. <input type="checkbox"/> one-time fee c. <input type="checkbox"/> commission d. <input type="checkbox"/> contingent fee e. <input type="checkbox"/> deferred f. <input checked="" type="checkbox"/> other, specify: In House Government Affairs Department	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature <input type="text"/> value <input type="text"/>		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment indicated on item 11: Sodexo has not conducted any lobbying activities related to this or any other federal contract. Lobbying activities focus on general issues being addressed by the federal government.		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: <input type="text"/>  Print Name: <input type="text"/> Michael Grey Title: <input type="text"/> Vice President Telephone No.: <input type="text"/> 401-265-1105 Date: <input type="text"/> 08/29/2022	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET
SF-LLL-A**

Reporting entity: _____ Page _____ of _____

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) Number, invitation for Bid (IFB) Number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check all that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached. List number of sheets if yes.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-00046), Washington, D.C. 20503.

Certification regarding lobbying

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


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

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

- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Sodexo Operations, LLC
9801 Washington Blvd.
Gaithersburg, MD 20878 _____
Name and Address of Organization

Michael Grey, Vice President
Name and Title of Submitting Official



Signature

08/29/2022

Date

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension. 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS OF REVERSE)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Sodexo Operations, LLC
Organization Name

Holyoke Public Schools
PR/Award Number or Project Name

Michael Grey, Vice President
Name and Title(s) of Authorized Representative(s)



08/29/2022

Signature(s)

Date

Form AD-1048 (1/92)

FSMC Guidance for SFAs – June 1995
Appendix –E – Debarment/Suspension

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction,

in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and /or debarment.

Form AD-1048 (1/92)

FSMC Guidance for SFAs – June 1995
Appendix E – Debarment/Suspension

S A M P L E

ENERGY POLICY AND CONSERVATION ACT
CONTRACT ADDENDUM

Food Service Management Company (FSMC) and the School Food Authority

agree to comply with the Energy Policy and Conservation Act (P.L. 94-163) for the duration of the contract.

For: Sodexo Operations, LLC _____
FSMC



Signature

Michael Grey, Vice President
Title

08/29/2022

Date

For: Holyoke Public Schools
the Board of Education

Signature

Mickey Buhl, CFOO
Title

Date

Certificate of Independent Price Determination

Both the school food authority and the Food Service Management Company (offeror) shall execute this Certificate of Independent Price Determination.

Sodexo Operations, LLC
Name of Food Service Management Company

Holyoke Public Schools
Name of School Food Authority

(A) By submission of this offer, the offeror certifies and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the Food Service Management Company certifies that:

(1) He or she is the person in the offerors organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or

(2) He or she is not the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (A)(1) through (A)(3) above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this Food Service Management Company, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:



Michael Grey

Vice President

08/29/2022

Signature of Food Service Management
Company's Authorized Representative

Title

Date

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action which may have jeopardized the independence of the offer referred to above.

Mickey Buhl

CFOO

Signature of School Food Authority's
Authorized Representative

Title

Date

Note: Accepting a bidder's offer does not constitute award of the contract.