

California Department of Education

Fixed-Fee Request for Proposal

And

Model Contract

For

School Food Authorities
Procuring the Services of a
Food Service Management Company



**School Food Service Contracts Unit
Nutrition Services Division
Student Support and Special Services Branch**

May 2014

Notice Requesting Proposal

Food Service Management Company RFP #20152

Notice is hereby given that the Governing Board of the Latino College Preparatory Academy (hereinafter referred to as **SFA**) is requesting proposals for a Food Service Management Company (hereinafter referred to as **Respondent[s]**) to assist with the SFA's food service management.

Respondents should not construe from this legal notice that the SFA intends to enter into a fixed-fee Contract with the Respondent unless, in the opinion of the SFA, it is in the best interest of the SFA to do so. The SFA reserves the right to negotiate final contractual terms with the successful Respondent.

The Request for Proposal (RFP) documents may be downloaded from the SFA's Web site at www.sjlcpa.org or can be obtained from the SFA by e-mail, U.S. mail, or fax. To request the RFP documents by e-mail, U.S. mail, or fax, please contact Michael Ramirez, Chief Operating Officer, 14271 Story Road, San Jose, Ca 95127, Attn: Michael Ramirez. The SFA will record and provide answers to any questions or requests for clarifying information about the RFP during the question and answer period.

The SFA will hold an optional tour of the SFA facilities on September 30th, 2015 @ 10:00am at the SFA Office.

Respondents must submit written proposals in a sealed envelope labeled "Proposal - Food Service Management Company RFP #20152" and addressed to the SFA Office at 14271 Story Road, San Jose, Ca 95127, Attn: Michael Ramirez. The SFA will accept all proposals received on or before October 19th, 2015 by 4:00 pm. The SFA will not accept proposals that are received after the deadline. The SFA will open proposals at October 19th, 2015 4:30 pm.

The SFA reserves the right to reject any or all proposals, and to waive any errors or corrections in a proposal or in the proposal process. The SFA will award the Contract based on a review and analysis of the proposals to determine which proposal best meets the needs of the SFA. Following the review and analysis of all responsive proposals, the SFA will make a recommendation to their Board of Education at its regularly scheduled meeting.



**REQUEST FOR PROPOSAL
FOOD SERVICE MANAGEMENT COMPANY
Cover Page**

RFP #20152

By

Latino College Preparatory Academy
FOOD SERVICE PROGRAM

ADDRESS ALL PROPOSALS TO:

Michael Ramirez
Chief Operating Officer

14271 Story Rd.
San Jose, CA 95127

Phone: (408) 585-5022 ext. 1002

E-mail: michael@tfhe.org

Fax: (408) 715-0154

Request for Proposal

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Introduction/Purpose of Solicitation

The purpose of this Request For Proposal (RFP) is to enter into a fixed-fee Contract with a Food Service Management Company (FSMC) that will provide Latino College Preparatory Academy (hereinafter referred to as the School Food Authority [SFA]) with food service management assistance in their food service operation. The FSMC will provide services to the SFA as described in the Scope of Work (Exhibit A of the Contract [Exhibit 1]). The FSMC will provide services, as described in the Scope of Work (Exhibit A of the Contract [Exhibit 1]), to the SFA which will enable the SFA to operate a financially self-sufficient meal program.

The SFA's food service goals are to provide nutritious, high-quality meals to students and participants, to accommodate special diets where medically necessary, improve the nutritional quality of meals, and maintain a financially viable food services program. The SFA offers the following programs:

1. Especially Needy Breakfast
2. National School Lunch Program Severe Need
3. Afterschool Meal Supplements
4. Seamless Summer Feeding Option

General Food Service goals are to:

- Provide an appealing and nutritionally sound program for students as economically as possible
- Stimulate both student and adult participation in the program through improving relations with students, staff, and the community by creating awareness of the direct correlation between adequate nutrition for students and their ability to learn
- Increase participation at all levels of the food service program by improving meal quality, seeking student and parent input, and successful menu variation and planning
- Maintain reasonable prices for students and adults participating in the food service program
- Maintain student and staff morale at a high level
- Create nutritionally sound and appealing menus
- Provide expertise regarding Food Service Industry standards, rules, regulations and procedures

All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with Title 2, *Code of Federal Regulations (2 CFR)*, Part 200. The SFA must share with all Respondents all information necessary for submitting a competitive proposal. The release of this RFP, evaluation of Respondents, and award of a contract will use competitive bidding standards established in all applicable California state and federal statutes and regulations.

Outlined below are competitive bidding basic standards:

- The purpose of soliciting competitive proposals is to secure public objectives in the most effective manner and avoid the possibilities of graft, fraud, collusion, etc.
- The SFA released this RFP to benefit the SFA and not the Respondents.
- Satisfaction of RFP specifications is based on full and fair competition and acceptance by the SFA of the most responsive and responsible Respondent to the SFA's requirements, as determined by the SFA when evaluating proposals based on the criteria contained in the RFP.
- The RFP must provide a basis for full and fair competition among Respondents on a common standard, free of restrictions that tend to stifle competition.

The above four points are for illustrative purposes only, and do not include all California state and federal requirements to achieve competitive bidding.

To respond to this RFP, interested companies must present evidence of experience, ability, and financial standing necessary to meet the requirements of this RFP. The SFA will measure this evidence by scoring the proposals using a point system that will score and rank each proposal from highest to lowest, to determine which proposals they will consider for the award of a contract.

To be competitive in this solicitation, the Respondent must take the responsibility to:

- Carefully read the entire RFP, attachments, exhibits, addenda, and SFA responses to questions before submitting a proposal
- Ask appropriate questions or request clarification by the deadline in the RFP
- Submit all required responses by the required deadlines
- Follow all instructions and requirements of the RFP thoroughly and appropriately

If a Respondent discovers any ambiguity, conflict, discrepancy, omission, or other errors in this RFP, the Respondent shall immediately notify the SFA of the error in writing and request clarification or a modification of the RFP. If the Respondent fails to notify the SFA of the error prior to the date for submission of proposals, and is awarded the contract, the Respondent shall not be entitled to additional compensation or time by reason of the error or its later correction.

**Schedule of Events
For
RFP # 20152**

- Release of RFP Wednesday, September, 23rd, 2015
- Public Notice Wednesday, September, 23rd, 2015
- Optional Tour* Wednesday, September 30th, 2015
- Respondent Question Submission Deadline Friday, October 2nd, 2015
- SFA Provides Answers Monday, October 5th, 2015
- Deadline for Submission of Proposal Monday, October 19th, 2015
- Proposals Evaluated Tuesday, October 20th, 2015
- Anticipated Contract Award Date Friday, October 23rd, 2015

The SFA will use every effort to adhere to the schedule. However, the SFA reserves the right to amend the schedule, as it deems necessary, and will post a notice of said amendment at www.sjlcpa.org.

*All interested Respondents are welcomed to attend an Optional Tour.

General Instructions for Respondents

1. Prepare proposals simply and economically. Provide a straightforward, concise description of the Respondent's capabilities to satisfy the SFA's requirements. Emphasis should be placed on completeness and clarity of content.
2. The SFA is requesting the FSMC on site services for five days per week. Fixed fee pricing should reflect the services for preparation and service of meals.
3. Submit proposals for the performance of all the services described within this RFP. The SFA will not consider any deviation from these specifications and will reject such proposals.
4. The SFA may reject a proposal if the proposal is conditional, incomplete, deemed nonresponsive, or if it contains any alterations of form, or other irregularities of any kind. The SFA may reject any or all proposals or waive any immaterial deviation in a proposal. The SFA's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the Respondent from full compliance with all other requirements if awarded the contract.
5. Respondents are responsible for the costs of developing proposals, and shall not charge the SFA for any preparation costs.
6. The SFA asks Respondents who do not intend to submit a proposal to notify the SFA in writing.
7. Respondents may modify their proposal after its submission by withdrawing the original proposal and resubmitting a new proposal prior to the submission deadline. The SFA will not consider proposal modifications offered in any other manner, either oral or written.
8. Respondents may withdraw their proposal by submitting a written withdrawal request to the SFA, signed by the Respondent or their authorized agent, through the contact person named in the "Contact Information" provided on the cover page of this RFP. Thereafter, a Respondent may submit a new proposal prior to the proposal submission deadline. Respondents may not withdraw their proposal without cause after the proposal submission deadline.
9. The SFA may modify the RFP prior to the date given for submission of proposals by posting an addendum on Latino website. The SFA will notify respondents and they can obtain any addenda from the SFA's Web site, or request it by e-mail, U.S. mail, or fax.
10. The SFA reserves the right to reject all proposals for reasonable cause. If the costs of all proposals are excessive, the SFA is not required to award a contract.

11. The SFA will not consider more than one proposal from an individual, firm, partnership, corporation, or association under the same or different names. Reasonable grounds for believing that any Respondent has submitted more than one proposal for work contemplated herein will cause the SFA to reject all proposals submitted by the Respondent. If there is reason to believe that collusion exists among the Respondents, the SFA will not consider any of the participants of such collusion in this or future solicitations.
12. The SFA will not consider a joint proposal submitted by two or more entities.
13. Additional charges for regular or express delivery, drayage, parcel post, packing, cartage, insurance, license fees, permits, or for any other purpose shall be included (and separately identified) in the proposal.
14. The Respondent or their authorized representative must sign the Authorization Agreement (Attachment F) and return it with the proposal package.
15. All proposals shall include the forms provided as attachments to this RFP. Respondents may copy these forms. A proposal is considered responsive if it follows the required format, includes all attachments, and meets all deadlines and other requirements outlined in this RFP.
16. The SFA shall not accept proposals after the submission deadline specified in the RFP and shall return the unopened proposals to the respective Respondents. The SFA will not consider late proposals under any circumstances.
17. Respondents are responsible for examining the entire RFP package, seeking clarification for any item or requirement that may not be clear to them, and checking all responses in their proposal for accuracy before submitting it.
18. Respondents may submit their questions regarding the information presented in this RFP to Michael Ramirez, by e-mail at michael@tfhe.org, or fax, at 408-715-0154, no later than 4:00pm Friday, October 2nd, 2015. The SFA will post all questions received and the answers on the school website: www.sjlcpa.org.
19. SFA representatives reserve the right to inspect a Respondent's other food service operations prior to any award of a contract.
20. The SFA reserves the right to negotiate final terms and conditions of the contract, which may differ from those contained in the proposal, provided the SFA considers such negotiation to be in its best interest. Any change in the terms and conditions must not create a material change to the original terms released in this RFP and require the SFA to rebid the contract.
21. Interested Respondents are required to inspect the SFA's premises prior to submitting a proposal in order to determine all requirements associated with the proposed contract. The inspection of premises will occur during the optional tour.

22. Respondents shall submit one paper copy and one copy in digital format (e.g., CD/DVD, flash drive, etc.).

- a) The paper copy must contain the original signature of the individual(s) authorized to bind the Respondent contractually, and be labeled "Master Copy."
- b) The Respondent must ensure the digital copy is complete and inclusive of all materials contained in the paper copy, including any required signatures. If there is an inconsistency between the paper and digital copies, the paper copy will take precedence.
- c) The sealed proposal envelopes must be marked legibly with the SFA's RFP number and title, and the SFA name and address, as shown in the following example:

RFP #20152
Food Service Management Company
Latino College Preparatory Academy
Attn: Michael Ramirez, Chief Operating Officer
14271 Story Rd, San Jose, CA 95127

Proposal Requirements

To be eligible for evaluation, a proposal must adhere strictly to the format set forth below; failure to do so may result in disqualification. Respondents must address each of the required sections indicated below. Please label and separate each section, and number all pages to allow for ease of review. The content and sequence of the proposal will be as follows:

<u>Section</u>	<u>Title</u>
A.	Cover Letter
B.	Table of Contents
C.	Required Attachments
D.	Minimum Qualifications
E.	Proposal Questionnaire
F.	Respondent References
G.	Authorization Agreement

A. Cover Letter

Only the individual(s) authorized to bind the Respondent contractually may sign the cover letter, which shall be a part of the proposal package. If the cover letter is unsigned, the SFA will reject the proposal. The SFA may reject the proposal if the Respondent fails to include the following required information:

- Name of responding company
- Organizational structure of the responding company (e.g., corporation, partnership, etc.)
- Respondent's Federal Employee Identification Number and Corporate Identification Number, if applicable
- Respondent's name, title, address, phone number, and fax number, and the e-mail address of the representative who will be designated as the primary liaison to the SFA
- Name, title, phone number, and e-mail address of the representative(s) authorized to bind the Respondent in a contract
- A statement expressing the Respondent's willingness to perform the services described in this RFP

- A statement expressing the Respondent's ability to perform the services required in the Scope of Work, including availability of staff and other required resources to meet all deliverables as described in this RFP
- A statement regarding the Respondent's proprietary information. If applicable, the Respondent must clearly mark in the upper right hand corner those pages to be considered proprietary. (Please note that the Respondent cannot consider the entire proposal to be proprietary.)
- The following certification:

By signing this cover letter, I (we) certify that the information contained in this proposal is accurate and that all attachments required to be submitted as part of the proposal are certified to be true and binding upon our company.

B. Table of Contents

Immediately following the cover letter, a comprehensive Table of Contents must be included, listing all submitted proposal sections, subsections, attachments, and materials.

C. Required Attachments

Respondent shall include all documents identified in the section titled "Attachments Checklist." The SFA may reject proposals that do not include the proper required attachments.

D. Minimum Qualifications

The SFA will only consider Respondents who **meet all minimum qualifications** (as listed on Attachment C) to the SFA's satisfaction.

E. Proposal Questionnaire

The Proposal Questionnaire (Attachment D) is intended to provide the SFA with specific information concerning the Respondent's capability to provide services as described in this RFP. Respondents should limit their responses to the number of pages noted in the questionnaire and answer each question in the same order.

F. Respondent References

The Respondent must provide three references using the Respondent References form (Attachment E). The SFA reserves the right to contact any of the persons/companies listed, and retains the right to conduct reference checks with individuals and entities beyond those supplied by the Respondent.

G. Authorization Agreement

The Respondent must sign the Authorization Agreement (Attachment F) and return it with the proposal package.

H. Fee Proposal

The Respondent must complete the Fee Proposal (Attachment G).and return it with the proposal package.

Evaluation of Proposals

Proposals will be opened on or after the date and time specified in the Schedule of Events. During the evaluation process, the SFA may ask Respondents to clarify information in the proposals, but Respondents may not change their proposals.

An error in the proposal may cause the SFA to reject that proposal; however, the SFA may, at its sole discretion, retain the proposal and make certain corrections. When determining if a correction will be made, the SFA will consider the conformance of the proposal to the format and content required by the RFP, and that the Respondent's intent is clearly established based on review of the whole proposal. Based on that established intent, the SFA may choose to correct an error such as obvious grammatical or punctuation errors and arithmetic errors. The Master Copy of the proposal shall have priority over additional proposal copies.

The SFA will open proposals to determine if they contain all the required information in accordance with this RFP. The SFA will evaluate qualifying proposals using the following criteria:

CRITERIA	MAXIMUM POINTS
Administrative Requirements: Did the Respondent include all required information in accordance with the General Instructions and Proposal Requirements?	5 points
Experience with School Breakfast and National School Lunch Programs.	10 points
Based on the Proposal Questionnaire responses and the Cover Letter, the Respondent demonstrates a complete understanding of the SFA's food service program and its service requirements, as described in the RFP and the Scope of Work, and can perform those services to the SFA's satisfaction.	15 points
The financial stability of the Respondent.	15 points
Corporate capability and experience as measured by performance record, years in the industry, relevant experience, number of SFAs served, client retention and satisfaction, and references.	20 points
Cost	35 points
TOTAL POINTS	100 points

The SFA will score and rank selected proposals by assigning a score between zero (0) and the maximum score to each proposal criterion. The SFA will recommend awarding the contract to the most responsive and responsible Respondent with the highest total proposal attachments

Attachment A:
Optional Tour

The Optional Tour will include an escorted tour on Wednesday, September 30th, 2015 to begin at 10:00 am at the SFA Office **14271 Story Rd, San Jose, CA 95127**. The tour schedule includes the sites listed below. Prospective Respondents may not contact any sites or employees outside of the scheduled visit. The SFA requests that Respondents do not take pictures during the tour since the SFA has not obtained releases from parents, students, and employees. The SFA thanks all Respondents for abiding by our requests to keep the disruption caused by the visit to a minimum.

TOUR SCHEDULE

10:00am
Latino College Preparatory Academy
14271 Story Rd,
San Jose, CA 95127

Attachment B:
Attachments Checklist

Respondent Company Name

Please complete this checklist to confirm that the items listed below have been included in your proposal. Place a checkmark or "x" next to each item you are submitting to the SFA. For your proposal to be considered, all required attachments must be returned, including this checklist. Submit one (1) copy of your proposal in a sealed package.

<u>Attachment</u>	<u>Attachment Name</u>
_____ 1	Cover Letter
_____ 2	Attachments Checklist
_____ 3	Minimum Qualifications
_____ 4	Proposal Questionnaire
_____ 5	Respondent References
_____ 6	Authorization Agreement
_____ 7	Fee Proposal
_____ 8	Certifications

Attachment C:
Minimum Qualifications

A Respondent must meet all of the following minimum qualifications to the SFA's satisfaction to be given further consideration. Failure to satisfy ANY of the minimum qualifications may result in the immediate rejection of the proposal.

As of July, 1st, 2015 both the Respondent's company and the responding company's key personnel meet all of the following minimum qualifications:

1. The responding company has at least five years of experience with food service programs.

Yes _____ No _____

2. The responding company has the resources and ability to provide approximately 70,000 meals for a period of 8 months, during which time 124 school days will need to be served.

Yes _____ No _____

3. The responding company has knowledge and experience with the Child Nutrition Information and Payment System (CNIPS).

Yes _____ No _____

4. The responding company has knowledge and experience with the compliance associated with School Breakfast Program and National School Lunch Program.

Yes _____ No _____

5. The responding company has knowledge and experience with Point-of-Sale software for the purpose of obtaining accurate meal counts.

Yes _____ No _____

6. The responding company has professional references that demonstrate and evidence the ability to perform the required services.

Yes _____ No _____

7. The responding company is licensed to do business in the State of California.

Yes _____ No _____

Attachment D:
Proposal Questionnaire

This proposal questionnaire is intended to provide the SFA with specific information concerning the responding company's capability to provide services as described in the RFP. Please be as concise as possible and limit your responses **to no more than two (2) pages per question, unless instructed otherwise. Type each question in the same order as listed in the questionnaire.**

Note: The SFA may choose to add or delete any provisions to their RFP as applicable.

1. Provide a general description of your company's qualifications and experience relevant to the minimum qualifications in Attachment C, along with any necessary substantiating information. Limit your responses to information about your company's capabilities.
2. Provide a statement indicating the year your company was founded; what the primary business (es) of the company is (are); the length of time the company has been providing food service management services (consulting, food purchase, etc.), and related services described in this RFP. In addition, provide the duration and extent of experience the company has with similar SFA food management services.
3. Provide a general description of how your company will be able to provide the experience, ability, and financial standing necessary to meet the requirements set forth in this RFP.
4. Provide a complete list of SFAs that have discontinued or terminated your company's services in the last five years, and the reason(s) why.
5. Provide an organization chart for your company, a description of the lines of communication, and the corporate responsibilities at each corporate level.
6. Provide a complete balance sheet or annual report (verified by a certified public accountant) for the last three years of operation.
7. Provide a description of promotional and/or marketing materials you will use to attract students to the program.
8. Provide a recommended transition plan that describes the steps the Respondent will take to begin providing the services described in this RFP.

**Attachment E:
Respondent References**

List three (3) references to which the Respondent has provided food service management services within the past 5 year(s).

Failure to complete and return this Attachment will cause your proposal to be rejected.

Reference 1		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		
Reference 2		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		
Reference 3		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		

Attachment F:
Authorization Agreement

Request for Proposal for Food Service Management Company
RFP Number: RFP#20152

We, _____ (FSMC Name), by our signature on this document certify the following:

1. That we will operate in accordance with all applicable California state and federal laws, regulations, and statutes.
2. That the terms, conditions, warranties, and representations made within this RFP and our proposal shall be binding upon us and shall be considered a part of the Contract as if incorporated therein.
3. That the proposal submitted is a firm and irrevocable offer good for ninety (90) days.
4. That we have carefully examined all terms and conditions set forth in the RFP Model Contract issued by Latino College Preparatory Academy.
5. That we have made examinations and verifications, and are fully conversant with all conditions under which services are to be performed for Latino College Preparatory Academy.
6. That negligence in the preparation or presentation of, errors in, or omissions from proposals shall not relieve us from fulfillment of any and all obligations and requirements in the resulting contract.

FSMC Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-mail Address: _____

Web site: _____

Name of Authorized Representative: _____

Title of Authorized Representative: _____

Signature of Authorized Representative

Date Signed: _____

**Attachment G:
Fee Proposal**

Respondents must provide a breakdown of all costs included in the fixed fee in the **SCHEDULE OF COSTS** section below, provide personnel costs in the **PERSONNEL COSTS** section below, and provide a cost per meal in the **COST PER MEAL** table below.

- Cost Breakdown Table Basic Instructions: provide a breakdown of all costs included in the fixed price, including personnel costs.
 - a) **The SFA is requesting the FSMC’s on-site services for one day (8 hours) per week. Fixed fee pricing should reflect the services for this amount of time.**

- Cost Per Meal Table Basic Instructions: provide the cost per meal; base all food costs on a 21-day cycle menu.
 - a) **All costs should be based on an average daily participation of 564 numbers of meals served on a 124 number of school days of an 8-month period.**

SCHEDULE OF COSTS (NOTE: Clearly identify all goods and services)

Item #	ITEM DESCRIPTION	Annual Cost
	Item Description Should Include All Goods and Services in the Fixed Fee	
1.		
2.		
3.		
4.		
5.		
SUBTOTAL		
PERSONNEL COSTS		
		Annual Cost
1.	Management Fee Per Meal	
2.	Consultant Fee Per Meal	
SUBTOTAL		
GRAND TOTAL		

COST PER MEAL

(NOTE: Prices must NOT include values for USDA Foods)

LINE ITEM	UNITS*	RATE	TOTAL
Breakfast		\$	\$
Lunch		\$	\$
Dinner		\$	\$
Snacks		\$	\$
Non-Reimbursable Meals		\$	\$
TOTAL		\$	\$

*Units to be provided by SFA

Attachment H:

CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 7 *CFR*, Part 3018, "New Restrictions on Lobbying," 7 *CFR*, Part 3017, "Government-wide Debarment and Suspension (Nonprocurement)" and 7 *CFR*, Part 3021, "Government-wide Requirements for Drug-Free Workplace (Grants)." The certification shall be treated as a material representation of fact upon which reliance will be placed when the SFA determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Title 31, *U.S. Code* (U.S.C.) Section 1352, and implemented at 7 *CFR*, Part 3018, for a person entering into a grant or cooperative agreement over \$100,000, as defined at 7 *CFR*, Section 3018.105, the applicant certifies that:

- (a) 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 making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- (b) 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 any agency, a Member of Congress, 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 these instructions; and
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

DISCLOSURE OF LOBBYING ACTIVITIES

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

Approved by OMB
No. 0348-0046

<p>1. Type of Federal Action:</p> <p>a. Contract b. Grant c. Cooperative agreement d. Loan e. Loan guarantee f. Loan insurance</p>	<p>2. Status of Federal Action:</p> <p>a. Bid/Offer/Application b. Initial Award c. Post-Award</p>	<p>3. Report Type:</p> <p>a. Initial filing b. Material change</p> <p>For Material Change Only: Year _____ Quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee <input type="checkbox"/> Tier, if known</p> <p>Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>c. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</p>	
<p>11. 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.</p>	<p>Signature:</p>	
	<p>Print Name:</p>	
	<p>Title:</p>	
	<p>Telephone No: ()</p>	<p>Date:</p>
<p>FEDERAL USE ONLY:</p>		<p><i>Authorized for Local Reproduction</i> Standard Form LLL (Rev. 7-97)</p>

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. 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., 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 registrant under the Lobbying Disclosure Act of 1995 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. The certifying official shall sign and date the form, print his/her name, title, and phone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 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 (0348-0046), Washington, DC 20503.

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 7 *CFR*, Section 3017.510, for prospective participants in primary covered transactions, as defined at 7 *CFR*, Section 3017.200:

- A. The contractor certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.
- B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Contractor/Company Name

Award Number, Contract Number, or Project Name

Name(s) and Title(s) of Authorized Representatives

Signature(s)

Date

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

Both the SFA and FSMC shall execute this Certificate of Independent Price Determination.

Name of FSMC

Name of SFA

A. By submission of this offer, the offeror (FSMC) 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 the case of an advertised 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 offeror certifies that:

4. He or she is the person in the offeror's 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
5. 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 vendor and 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 (provide detail):

Signature of FSMC's
Authorized Representative

Title

Date

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

Signature of SFA's
Authorized Representative

Title

Date

NOTE: Accepting a Respondent's offer does not constitute award of the contract.



LATINO COLLEGE PREP

MODEL FIXED-FEE CONTRACT
FOOD SERVICE MANAGEMENT COMPANY

Latino College Preparatory Academy
FOOD SERVICE PROGRAM

14271 Story Rd.
San Jose, CA 95127

Phone: (408) 585-5022 ext. 1002
Fax: (408) 715-0154

Model Fixed-Fee Contract

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Contract Summary

FOOD SERVICES CONTRACT

CONTRACT NUMBER

REGISTRATION NUMBER

1. This contract is entered into between the School Food Authority and the Food Service Management Company named below:

SCHOOL FOOD AUTHORITY'S NAME

FOOD SERVICE MANAGEMENT COMPANY'S NAME

2. The term of this Contract is:

3. -

4. The parties herein agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the contract.

Request for Proposal Released	page(s)
Contractor Proposal Received	page(s)
Attached Terms and Conditions	page(s)
Exhibit A: Scope of Work	page(s)
Exhibit B: Schedule of Fees	page(s)

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

FOOD SERVICE MANAGEMENT COMPANY

NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

SCHOOL FOOD AUTHORITY

NAME

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

*California Department of Education
Use Only*

Exempt per:

Model Fixed-Fee Contract

I. INTRODUCTION

The Latino College Preparatory Academy, hereinafter referred to as the School Food Authority (SFA), enters into this Contract with _____ [Food Service Management Company Name], hereinafter referred to as the Food Service Management Company (FSMC) to provide food service management assistance for the SFA’s nonprofit food service program, hereinafter referred to as “Services.” **During the term of this Contract, the FSMC will provide services to the SFA as described in the Scope of Work, Exhibit A of this Contract.**

II. GENERAL TERMS AND CONDITIONS

A. Term

The term of this contract is eight (8) months. The FSMC shall commence providing Services under the contract on November 1st, 2015, and continue through June 30th, 2016. After careful consideration, the SFA may annually renew this contract for four (4) additional one (1) year periods upon agreement between both parties. Execution of all contracts and amendments is contingent on approval by the California Department of Education (CDE). The SFA may cancel this Contract upon notification from the CDE that it or any part of the bidding process is determined noncompliant with state and federal laws and regulations.

B. Contract Liaisons Designated by the SFA and FSMC

SFA Liaison for Services		FSMC Liaison for Services	
Name:		Name:	
Title:		Title:	
Phone:	Cell Phone:	Phone:	Cell Phone:
Fax:	E-mail:	Fax:	E-mail:

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

SFA	FSMC
Name:	Name:
Title:	Title:
Address:	Address:

C. Fees

1. Fixed-Fee Contracts

The SFA will pay the FSMC at a fixed rate per meal. The fixed rate per meal includes all fees and charges indicated in Exhibit B (Schedule of Fees) in this Contract. The SFA must determine, and the FSMC shall credit the SFA for the full value of U.S. Department of Agriculture (USDA) Foods. The FSMC's fixed-price invoice will be fully compliant with Title 7, *Code of Federal Regulations (7 CFR)*, parts 210, 215, and 220, Procurement Requirements for the National School Lunch and Special Breakfast per the USDA, Food and Nutrition Service Final Rule dated Wednesday, October 31, 2007. The FSMC has already taken discounts, rebates, and other credits into account when formulating their prices for this fixed-fee contract.

2. Payment Terms

The FSMC shall submit monthly invoices by 10th day of the following month that reflects all activity for the previous calendar month. The FSMC must submit detailed cost documentation monthly to support all charges to the SFA. Charges and expenses are included in the Schedule of Fees (Exhibit B). All costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC, and must be allowable costs consistent with the cost principles in Title 2, *CFR (2 CFR)*, Part 200, as applicable. The SFA will pay invoices submitted by the FSMC within 30 days of the invoice date. The SFA will pay invoices received by its Accounting Department by the end of the following month, if the invoices pass the SFA's audit. The SFA will notify the FSMC of invoices that do not pass audit, which they will not pay until the invoices have passed audit, with no penalty accruing to the SFA.

3. Interest, Fines, Penalties, and Finance Charges

Interest, fines, penalties, and/or finance charges that may accrue under this contract are not allowable cafeteria fund expenses. The SFA will not pay unallowable expenses from the SFA's Nonprofit School Food Service.

4. Spoiled or Unwholesome Food

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

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

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

D. Contract Cost Adjustment

The renegotiation of price terms under this Contract is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of both parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this contract were based, then those price terms so affected may be renegotiated by both parties. Renegotiation of price terms under such conditions must be mutual, and both parties must agree on any changes in price terms. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Contract. Substantive changes of the Contract will require the SFA to rebid the Contract.

E. Availability of Funds

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

F. Timeliness

Time is of the essence in this contract.

G. Approval

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

H. Amendment

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

I. Substantive Changes to Contract

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

- The addition of a program
- A major shift in responsibilities for FSMC/SFA staff
- A contract modification that changes the scope of the Contract or increases the price of the Contract by more than the applicable federal, state, or local small purchase threshold (2 *CFR* Section 200.324)

J. Subcontract/Assignment

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

K. Written Commitments

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

- Any warranty or representation made by the FSMC in any publication, drawing, or specifications accompanying or referred to in the proposal pertaining to the responsiveness of the proposal

- Any written notifications, affirmations, or representations made by the FSMC in or during the course of negotiations and that are incorporated into a formal amendment to the proposal

L. Trade Secrets/Copyrights

The FSMC and the SFA shall designate any information they consider confidential or proprietary, including recipes, surveys and studies, management guidelines, operational manuals, and similar documents that the SFA regularly uses in the operation of their business or that they develop independently during the course of this Contract. Information so designated and identified shall be treated as confidential by the FSMC and the SFA, and the FSMC and the SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences, unless disclosure is otherwise required under the law. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this Contract. Notwithstanding, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use the following, and to authorize others to use, for federal government purposes:

- The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant
- Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support (2 *CFR* Section 200)

M. Severability

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

N. Counterparts

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

O. Silence/Absence/Omission

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

P. Indemnification

1. The FSMC shall indemnify and hold harmless the SFA, or any employee, director, agent, or Board Member of the SFA, from and against all claims, damages, losses, and expenses (including attorney's fees and court costs incurred to defend litigation), and decrees or judgments whatsoever arising from any and all injuries, including death or damages to or destruction of property resulting from the FSMC's acts or omissions, willful misconduct, negligence, or breach of the FSMC's obligations under this Contract by the FSMC, its agents, employees, or other persons under its supervision and direction.
2. The FSMC shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the SFA's sole acts or omissions.

Q. Sanctions

For the breach of the Contract and associated benefits:

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

R. Force Majeure

1. Neither party shall be liable to the other for delay in or failure of performance, nor shall any such delay in or failure of performance constitutes default, if such delay or failure is caused by force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure may include, but is not restricted to, acts of God, the public enemy, acts of the state in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.
2. Force majeure does not include any of the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market
 - Late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence
 - Inability of either the FSMC or any of its subcontractors to acquire or maintain any required insurance, bonds, licenses, or permits
3. If either party is delayed at any time in the progress of work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable and no later than the following work day or the commencement thereof, and shall specify the causes of such delay. Such notice shall be delivered or mailed certified return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time for completion shall be extended by contract amendment, as long as the amended period does not violate 7 *CFR* Section 210.16(d).
 4. Any delay or failure in performance by either party caused by force majeure shall not constitute default, or give rise to any claim for damages, or loss of anticipated profits.

S. Nondiscrimination

Both the SFA and FSMC agree that no child who participates in the National School Lunch Program (NSLP), Special Milk Program (SMP), School Breakfast Program (SBP), Summer Food Service Program (SFSP), or Child and Adult Care Food Program (CACFP) will be discriminated against on the basis of ancestry, sex, race, color, religion, creed, national origin, sexual preference, marital or parental status, pregnancy, age, or disability.

T. Compliance with the Law

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

The FSMC shall comply with 2 *CFR* parts 200 as applicable, 7 *CFR* parts 210 (NSLP), 215 (SMP), 220 (SBP), 225 (SFSP), 226 (CACFP), 245 (Determining Eligibility For Free And Reduced Price Meals And Free Milk In Schools) as applicable, 250 (Donation Of Foods For Use In The United States, Its Territories And Possessions And Areas Under Its Jurisdiction), USDA Food and Nutrition Service (FNS) Instructions and Policy, federal laws and regulations, California *Education Code* (EC), and California laws and regulations, where applicable.

U. Choice of Law

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

V. Advice of Counsel

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

III. RELATIONSHIP OF THE PARTIES

- A.** The FSMC's relationship with the SFA will be that of an independent contractor and not that of an employee or supervisor of the SFA. The FSMC will not be eligible for any employee benefits, nor will the SFA make deductions from payments made to the FSMC for taxes, all of which will be the FSMC's responsibility. The FSMC agrees to indemnify and hold the SFA harmless from any liability for, or assessment of, any such taxes imposed on the SFA by relevant taxing authorities. The FSMC will have no authority to enter into contracts that bind the SFA or create obligations on the part of the SFA (*EC* Section 45103.5).
- B.** The FSMC, as an independent contractor, shall have no authority to supervise food service classified personnel operating the NSLP, SBP, After School Meal Supplements (AMS) in the NSLP, and/or SMP (*EC* Section 45103.5).
- C.** All services to be performed by the FSMC will be as agreed between the FSMC and the SFA. The FSMC will be required to report to the SFA concerning the services performed under this Contract. The SFA shall determine the nature and frequency of these reports.

- D. The SFA is the responsible authority without recourse to USDA or CDE for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims or other matters of a contractual nature.

IV. FOOD SERVICE PROGRAM

A. Food Service Management Company Responsibilities

1. Except for food, the FSMC shall not incur any expenses on behalf of the SFA.
2. The FSMC shall, to the maximum extent practicable, purchase domestic commodities or products. *7 CFR* 210.21(d) (2).

A. SFA Responsibilities

1. The SFA shall ensure that the food service operation is in conformance with the SFA's Agreement with the CDE and will monitor the food service operation through periodic onsite visits (*7 CFR*, sections 210.16[a][2] and 210.16[a][3]).
2. The SFA shall retain control of the quality, extent, and general nature of the food service program, and establish all program and non-program meal and a la carte prices (*7 CFR*, sections 210.9[b][1] and 210.16[a][4]).
3. SFAs with more than one school shall perform no less than one onsite review of the lunch counting and claiming system employed by each school under its jurisdiction. The onsite review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the SFA shall ensure that the school implements corrective action; and, within 45 days of the review, conduct a follow-up onsite review to determine that the corrective action resolved the problem. Each onsite review shall ensure that the school's claim is based on the counting system authorized by the CDE under *7 CFR* Section 210.7(c) and that the counting system, as implemented, yields the actual number of reimbursable free, reduced-price, and paid lunches respectively, served for each day of operation (*7 CFR* Section 210.8[a][1]).
4. The SFA shall retain control of the nonprofit school service account and overall financial responsibility for the nonprofit food service operation; the

quality, extent, and the general nature of its food service; and the prices to be charged to the children for meals (7 *CFR* Section 210.16[a][4]).

5. The SFA shall retain responsibility for developing the meal pattern for students with disabilities when their disability restricts their diet, and for those nondisabled students who are unable to consume the regular lunch because of medical or other special dietary needs (7 *CFR* Section 210.10[g]).
6. The SFA shall retain signature authority for the food services application, agreements, Free and Reduced-Price Policy Statement, monthly Claim for Reimbursement, reports, program renewal, the verification of applications, letters to households, and all correspondence to the CDE relating to the food service programs (7 *CFR* Section 210.16[a][5]).
7. The SFA shall retain signature authority and be responsible for all contractual agreements entered into in connection with the food service program (7 *CFR* Section 210.21).
8. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster (*EC* Section 49558).
9. The SFA shall be responsible for the development, distribution, and collection of the parent letter and Application for Free and Reduced-Price Meals and/or Free Milk. (*EC* Section 49558 and 7 *CFR* Section 245.6).
10. If the SFA utilizes direct certification of eligibility, the SFA shall be responsible for obtaining the direct certification list at least annually (*EC* Section 49558).
11. The SFA shall be responsible for the determination of eligibility for free and reduced-price meals and shall disclose the eligibility status of individual students or confidential information provided on the application for free or reduced-price meals to the FSMC to the extent that such information is necessary for the FSMC to fulfill its obligations under this Contract. The FSMC will not disclose the eligibility status of individual students or confidential information provided.
12. The SFA shall be responsible for conducting any hearings related to determinations regarding free and reduced-price meal eligibility (*EC* Section 49558 and 7 *CFR* Section 245.7).

13. The SFA shall be responsible for verifying applications for free and reduced-price meals as required by federal regulations (7 *CFR* sections 245.6 and 245.6a).
14. The SFA shall establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning (7 *CFR* Section 210.16[a][8]).
15. The SFA shall maintain applicable health certification and ensure that all state and local regulations are being met by the FSMC serving meals at an SFA facility (7 *CFR* Section 210.16[a][7]).

V. U.S. DEPARTMENT OF AGRICULTURE FOODS

A. FSMC Responsibilities

1. The FSMC shall fully utilize, to the maximum extent possible, USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA's nonprofit school food program (7 *CFR* Section 210.16[a][6]).
2. In accordance with 7 *CFR* Section 250.53, the FSMC shall comply with the following provisions relating to the use of USDA Foods, as applicable:
 - a. The FSMC must credit the SFA for the value of all USDA Foods (including both entitlement and bonus foods) received for use in the SFA's meal service in the school year or fiscal year. The credit must include the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA, or acts as an intermediary in passing on the USDA Food value of processed end products to the SFA (7 *CFR* Section 250.51[a]).
 - b. The FSMC shall account for the value of USDA Foods (7 *CFR* Section 250.51) by:
 1. Subtracting the value of all USDA Foods received for use in the SFA's food service from the SFA's (monthly/quarterly) invoice, and
 2. Using the Average Price File for the School Year that the USDA Foods are received by the SFA. This listing is available from the USDA Web page at <http://www.fns.usda.gov/fdd/processor-pricing-reports>

3. The FSMC will be responsible for any activities relating to USDA Foods in accordance with 7 *CFR* Section 250.50(d)(2), (3), and (4), and will assure that such activities are performed in accordance with the applicable requirements in 7 *CFR* Part 250.
4. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
5. The FSMC must use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service (7 *CFR* Section 250.51[d]).
6. In accordance with 7 *CFR* Section 250.51(d), the FSMC may, in most cases, use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality in place of donated foods. Exceptions are donated ground beef, donated ground pork, and all processed end products that contain donated foods that may not be replaced with commercial substitutes. The SFA must ensure that such substitution has been made, and that it has received credit for the value of all donated foods received, in accordance with review requirements in 7 *CFR* Section 250.54(c).
7. According to 7 *CFR* Section 250.53(a)(7), the FSMC shall ensure that the processing agreement's value will be used in crediting the SFA for the value of USDA Foods contained in end products
8. The FSMC will provide assurance that it will not itself enter into the processing agreement with the processor required in subpart C of 7 *CFR* Part 250.
9. The FSMC will provide assurance that it will comply with the storage and inventory requirements for USDA Foods.
10. The distributing agency, subdistributing agency, the CDE, SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform 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 USDA Foods.
11. The FSMC will maintain records to document its compliance with requirements relating to USDA Foods, in accordance with 7 *CFR* Section 250.54(b).

12. Any extensions or renewals of the Contract, if applicable, are contingent upon the fulfillment of all Contract provisions relating to USDA Foods.

B. SFA Responsibilities

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

VI. MEAL RESPONSIBILITIES

A. The FSMC shall:

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

VII. FSMC EMPLOYEES

- A.** The SFA reserves the right to interview and approve the onsite food service consultant(s)/employee(s).
- B.** The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and work hours. The FSMC will provide specific

locations and assignments to the SFA six calendar weeks prior to the commencement of operation.

- C. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC will be responsible for supervising and training their personnel.
- D. The FSMC agrees to assume full responsibility for the payment of all contributions and assessments, both state and federal, for all employees engaged by it in the performance of this Contract.
- E. The FSMC agrees to furnish the SFA, upon request, a certificate or other evidence of compliance with state and federal laws regarding contributions, taxes, and assessments on payroll.
- F. The FSMC will be solely responsible for all personnel actions regarding employees on its respective payroll. The FSMC shall withhold and/or pay all applicable federal, state, and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees, and workers' compensation costs, and shall file all required documents and forms. The FSMC shall indemnify, defend, and hold the SFA harmless from and against any and all claims, liabilities, and expenses related to, or arising out of the indemnifying party's responsibilities set forth herein.
- G. The FSMC shall comply with SFA's onsite vendor regulations by providing a statement that all hired personnel have undergone a criminal background check and fingerprinting and Mantoux tuberculosis test (TB).

VIII. BOOKS AND RECORDS

- A. The SFA and the FSMC must provide all documents as necessary for an independent auditor to conduct the SFA's single audit. The FSMC shall maintain such records as the SFA will need to support its Claims for Reimbursement. Such records shall be made available to the SFA upon request, and shall be retained in accordance with 7 *CFR* Section 210.16(c)(1).
- B. The SFA and the FSMC shall, upon request, make all accounts and records pertaining to the nonprofit food service program available to the CDE and USDA FNS for audit or review at a reasonable time and place. Each party to this Contract shall retain such records for a period of three (3) years after the date of the final Claim for Reimbursement for the fiscal year in which this

Contract is terminated unless the audit findings have not been resolved. If audit findings have not been resolved, then records shall be retained beyond the three-year period as long as required for resolution of issues raised by the audit (7 *CFR* Section 210.9[b][17]).

- C. The FSMC shall not remove state or federally required records from the SFA premises upon contract termination.
- D. The SFA and the FSMC shall allow the CDE, USDA, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the FSMC which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transcriptions (2 *CFR* Section 200.333 and 200.336).

IX. MONITORING AND COMPLIANCE

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

X. EQUIPMENT, FACILITIES, INVENTORY, AND STORAGE

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

XI. CERTIFICATIONS

- A.** The FSMC warrants and certifies that in the performance of this Contract, it will comply with the rules and regulations of the CDE and the USDA, and any additions or amendments thereto, including but not limited to 2 *CFR* parts 200, 7 *CFR* parts 210, 215, 220, 225, 245, 250, and USDA FNS Instruction and Policy, as applicable. The FSMC agrees to indemnify the SFA and the CDE against any loss, cost, damage, or liability by reason of the FSMC's violation of this provision.

- B. The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments; Section 504 of the Rehabilitation Act of 1973; and any additions or amendments to any of these regulations.
- C. The SFA and FSMC shall comply with all applicable standards, orders, or regulations issued, including:
1. Section 306 of Clean Air Act (42 *U.S.C.* 1857[h])
 2. Section 508 of the Clean Water Act (33 *U.S.C.* 1368)
 3. Executive Order 11738
 4. Environmental Protection Agency (EPA) regulations 40 *CFR* Part 15, et seq. Environmental violations shall be reported to the USDA and the U.S. EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's List of Violating Facilities.

D. Debarment Certification

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

E. Lobbying

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

F. Energy Policy and Conservation Act

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

G. Contract Work Hours and Standards Act Compliance

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

XII. INSURANCE

A. Workers' Compensation Insurance

Each party shall maintain Workers' Compensation Insurance coverage as required by state law, and Employers' Liability in the amount of one million dollars (\$1,000,000.00) for each accident covering all employees employed in connection with the Child Nutrition Program operations.

B. Comprehensive or Commercial Insurance

The FSMC shall maintain during the term of this Contract, for protection of the SFA and the FSMC, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than five million dollars (\$5,000,000.00) for each occurrence, including, but not limited to, Personal Injury Liability, Broad Form Property Damage Liability on the FSMC-owned property, Blanket Contractual Liability, and Products Liability, covering only the operations and activities of the FSMC under the Contract and, upon request, shall provide the SFA with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without 30 days prior written notice of cancellation to the SFA. With the exception of Workers' Compensation Insurance, the SFA shall be named as an additional insured under the FSMC's policies of insurance to the extent the SFA is indemnified pursuant to this Contract.

C. Property Insurance

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

XIII. TERMINATION

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

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

Exhibit A

Scope of Work

I. OVERVIEW OF LATINO COLLEGE PREPARATORY ACADEMY FOOD SERVICE PROGRAM

- A. The SFA provides food service to approximately 564 children at one site. The food service prepares approximately 70,000 meals in a period of eight (8) months (November 1st, 2015 – June 3rd, 2016).
- B. Financial Goals.
The FSMC will provide services to the SFA which will enable the SFA to operate a financially self-sufficient meal program, with the overall goal of limiting deficit spending and contribution from General Fund.
- C. Management Goals.
 - 1. To provide an appealing and nutritionally sound program for students as economically as possible while in full compliance with all federal, state and local laws and regulations.
 - 2. To occasionally survey meal program participants and staff for feedback on food quality and likability of the meals provided by and to the extent possible are receptive of suggestions.
 - 3. To stimulate both student and adult participation in the program through improving relations with students, staff and community by creating awareness of the advantages of a sound food service program.
 - 4. To promote an educational value and nutritional awareness where the food service program can interface with other District programs.
 - 5. To maintain reasonable competitive prices in the program.
 - 6. To maintain student and staff morale at a high level.
- D. Food Service Office and Staff. The food service office is located at; 14271 Story Rd. San Jose, Ca. 95127.
- E. National School Lunch Program, School Breakfast Program, Afterschool Meal Supplements and Seamless Summer Feeding Program.

PARTICIPATION:

PROGRAM NAME	GRADES	MAX ENROLLMENT*	AVERAGE DAILY PARTICIPATION	FULL PAY*	FREE*	REDUCED*
ESPECIALLY NEEDY BREAKFAST	9-12	564	224	26	164	34
ESPECIALLY NEEDY LUNCH	9-12	564	274	32	198	44

*These numbers are based on full enrollment for the 2014-2015 school year. There is no guarantee these numbers will be met.

II. DESCRIPTION OF FSMC RESPONSIBILITIES:

RESPONSIBILITIES OF THE FSMC shall include:

A. PURCHASING OF SUPPLIES FOR THE FOOD SERVICE PROGRAM

- Recommend purchasing standards and specifications that will result in the best quality and price for the food service program, at the lowest cost available
 1. All transactions shall be conducted in a manner so as to provide maximum open and free competition as provided by statute and regulation
 2. The grade, purchase unit, style, weight, ingredients, formulation, etc., shall be in compliance with applicable statutes and regulations
- Purchase food and/or supplies. If authorized by the SFA, the FSMC shall purchase food used by the food service operation; the purchasing of food shall not displace SFA staff or delegate responsibilities of the SFA to the FSMC
- Recommend new or improved procedures for the requisition, receipt, and verification of all supplies used by the food service operation.
- Supply all eating utensils, paper products and condiments.

B. FACILITY OR SITE OPERATIONS

- FSMC should transport items to SFA site ensuring that all food arrives at the school site at the temperatures for safe consumption as required by the State of California. Temperatures shall be verified and documented upon delivery.
- All food will be properly stored, prepared, packaged and transported free of contamination and at appropriate temperatures.
- Recommend (or provide a plan for) safety programs for employees. This includes the possibility of partnering with SFA to provide safety trainings through resources already used by SFA's Human Resources.
- Recommend sanitation standards for housekeeping, preparation, storage, and equipment.
- Recommend adjustments to practices and operation of equipment provided by SFA as required. This will include the recommendation for additional, or upgrading of existing equipment.
- Participate in and provide recommendations for the development, implementation, and maintenance of a Food Safety Plan.
- Provide recommendations that increase participation at all levels of the SFA food service programs by improving food quality at the service point by upgrading equipment and facilities, by seeking student and parent input, and/or by successful menu variation and planning.

B. MENUS

- Adhere to the 21-day cycle menu for the first 21 days of meal service. Thereafter, the SFA may only make changes with the SFAs approval (**7 CFR 210.16[b][1]**).
- Provide recommendations for menu development that will result in the best quality and price for the food service program, at the lowest cost available.
- Provide, upon request by the SFA, recommended menus to assure compliance with all applicable statutes and regulations; include menu recommendations to meet the needs of students with special dietary needs or disabilities

C. QUALITY CONTROL

- Recommend or establish a formal structure to routinely and continuously gather input from students, staff, and parents about food services.
- Recommend or establish a structure or process to routinely and continuously gather input from food service employees to ensure the most effective and efficient operation possible.
- FSMC will obtain and maintain all Federal, State and local health certifications and regulations that apply to school facilities and any other facilities in which meals are prepared or packaged.
- Ensure that stockpiling or storage of food prepared for that day's consumption is avoided. Food should be properly disposed of and shall not be served to any individual after the date of delivery.

D. STAFF

- Recommend management staff and structure that will enhance the SFA's food service programs and ensure that the SFA's food service programs are of consistent top quality and of positive regard by students, staff, and the public
- Recommend or establish and conduct management and staff training programs which will ensure staff development, proper supervision, professional/health certification, and consistent quality control both in production and service
- Recommend hours and number of positions at each site to meet food service operational needs. The FSMC needs staff for the following purposes:
 1. Setting-up meals for the student meal line.
 2. Serving meals
 3. Cleaning-up and disinfecting kitchen area.
 4. Operating Point-of-Sale software to properly account for daily meal counts and ensuring only eligible meals are being claimed.
 5. Running monthly reports of student meal counts for the submission of reimbursement claims.
 6. Provide the SFA compliance reporting support.

E. RECORDS

- Maintain full and complete financial and inventory records sufficient to meet federal and state requirements and in accordance with generally accepted accounting procedures.
- Maintain employment records that show FSMC staff has all professional and health certifications as are required by the federal or state law, and the SFA.

F. EDUCATION

- Recommend actions or events to promote the nutrition education aspects of the food service program, and recommend or cooperate with efforts to merge these actions or events with classroom instruction.

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

G. REPORTS

- Collect and provide, in the required format, information necessary for school food service claims for reimbursement from state and federal agencies, and maintain records of past information; at the end of each month the number of meals to be claimed will be submitted to the SFA contact by the FSMC consultant/representative on or before the 15th of each month (*7 CFR* 210.16(c)(1))
- Provide the SFA with monthly operating statements and other information determined by the SFA regarding the food service programs for the proper financial accounting of the program.

H. POINT OF SERVICE

- The SFA will provide an accurate point of service meal/milk count system; such meal/milk counting system must eliminate the potential for the overt identification of free and reduced-price eligible students under *7 CFR* Section 245.8

Exhibit B

Schedule of Fees

The costs included in the COST PER MEAL table comprise the fixed fee per meal. The fees are agreed upon by both parties, and represent allowable food service costs in accordance with 2 *CFR* Parts 225 and 230 as applicable. **(NOTE: All costs are based on an average daily participation of 564 number of meals served and 124 school days.)**

COST PER MEAL (NOTE: Prices must NOT include values for USDA Foods)

LINE ITEM	UNITS*	RATE	TOTAL
Breakfast	31,143	\$	\$
Lunch	37,857	\$	\$
Snacks	12,400	\$	\$
Non-Reimbursable Meals		\$	\$
TOTAL		\$	\$

*Units to be provided by SFA