

## A G R E E M E N T

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado and the **OFFICE OF CHILDREN’S AFFAIRS** (the “City”) and **MICHAEL’S OF DENVER CATERING INC.**, a Colorado corporation, whose address is 5604 Kendall Court, Arvada, Colorado 80002 (the “Contractor”), jointly (“the Parties”).

The Parties agree as follows:

**1. COORDINATION AND LIAISON:** The Contractor shall fully coordinate all services under the Agreement with the Executive Director of Public Health and Environment, (“Executive Director”) or, the Executive Director’s Designee.

**2. SERVICES TO BE PERFORMED:**

**a.** As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, Scope of Work and Budget**, to the City’s satisfaction.

**b.** The Contractor is ready, willing, and able to provide the services required by this Agreement.

**c.** The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

**3. TERM:** The Agreement will commence on **January 1, 2026**, and will expire on **December 31, 2031** (the “Term”). The term of this Agreement may be extended by the City under the same terms and conditions by a written amendment to this Agreement. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

**4. COMPENSATION AND PAYMENT:**

**a. Budget.** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the line-item amounts

set forth in the budget contained in **Exhibit A**. Amounts billed may not exceed the budget set forth in **Exhibit A**.

**b. Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in the budget in **Exhibit A**.

**c. Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

**d. Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **THREE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$3,500,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(3) The Contractor further understands that this Agreement is funded, in whole or in part, with federal funds as set forth in a federal financial assistance award, attached as **Exhibit C**. The Contractor expressly understands and agrees that its rights, demands, and claims to compensation arising under this Agreement are contingent upon the City's actual receipt of such federal funds and the continued funding by the federal government. If such funds or any part thereof are not received, appropriated, or allocated by the City, the City and the Contractor may mutually amend the Agreement, or the City may unilaterally terminate this Agreement. If the

federal government terminates the federal financial assistance awards, disallows the costs associated with this Agreement, or otherwise reduces the funds awarded or actually paid to the City under, the City reserves the right to make any necessary reductions to this Agreement.

**5. STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or Directors of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**6. TERMINATION/ NOTICE TO STOP:**

**a.** The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon ten (10) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director or when it receives notice of termination.

**b.** Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**c.** Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

**d.** If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents

and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination “DRAFT-INCOMPLETE”.

e. The City has the right to issue a Notice to Stop Work (“Notice to Stop Work”) if the City has reason to believe, in its sole discretion, that the federal funds for this Agreement are not available, delayed, or withheld for any reason. Upon receiving a Notice to Stop Work, the Contractor shall cease all work under the Agreement immediately, or within the time set forth in the Notice. Contractor shall submit an invoice for all outstanding work as soon as possible, but no later than fifteen (15) days after the date of the Notice to Stop Work or as directed in the Notice. The Contractor shall not resume work under the Agreement until it receives a Notice to Proceed (“Notice to Proceed”) from the City. A Notice to Stop Work does not terminate the Agreement.

**6. EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

**7. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right

or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

**8. INSURANCE:**

**a. General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-VIII” or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b. Proof of Insurance:** Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the certificate of insurance. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance

requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability, Business Automobile Liability, and Excess Liability/Umbrella (if required), Contractor and subconsultant's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. **Workers' Compensation and Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

g. **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation or misconduct.

h. **Business Automobile Liability:** Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**9. DEFENSE AND INDEMNIFICATION:**

a. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

c. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**10. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance D.R.M.C. § 20-107, *et seq.*

The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

**11. ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, subcontractor or assign.

**12. INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**13. NO THIRD-PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**14. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

**15. SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

**16. CONFLICT OF INTEREST:**

**a.** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**b.** The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**17. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of Public Health and Environment or Designee  
201 W. Colfax Avenue, Suite 800  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**18. DISPUTES:** All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

**19. GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

**20. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

**21. COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**22. LEGAL AUTHORITY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms,

performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

**23. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**24. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**25. INTELLECTUAL PROPERTY RIGHTS:** The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

**26. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor’s obligations to provide insurance and to indemnify the City will survive for a period

equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**27. ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**28. CONFIDENTIAL INFORMATION:**

**a. City Information:** Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

**29. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**30. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the Parties as to the subject

matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**31. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

**32. COMPLIANCE WITH DENVER WAGE LAWS:** To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**33. PROTECTED INFORMATION AND DATA PROTECTION:**

**a. Compliance with Data Protection Laws:** The Contractor shall comply with all applicable laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Contractor under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Contractor's performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq.*, C.R.S.; § 24-85-103 (2.5), C.R.S.; IRS Publication 1075; the Health Information Portability and Accountability Act (HIPAA); the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy

for all Criminal Justice Information; the Colorado Consumer Protection Act; and the Payment Card Industry Data Security Standard (PCI-DSS), (collectively, “Data Protection Laws”). If the Contractor becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Contractor shall promptly notify the City.

**b. Personal Information:** “PII” means personally identifiable information including, without limitation, any information maintained by the City about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§ 24-73-101, C.R.S. “PII” shall also mean “personal information” as set forth at § 24-73-103(1)(g), C.R.S. If receiving PII under this Agreement, the Contractor shall provide for the security of such PII, in a manner and form acceptable to the City, including, without limitation, City non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, and security audits. In addition, as set forth in § 28-251, D.R.M.C., the Contractor, including, but not limited to, the Contractor’s employees, agents, and subcontractors, shall not collect or disseminate individually identifiable information about the national origin, immigration, or citizenship status of any person, over and above the extent to which the City is required, under this Agreement, to collect or disseminate such information in accordance with any federal, state, or local law.

**c. Safeguarding Protected Information:** “Protected Information” means data, regardless of form, that has been designated as private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student records, education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and PII. Protected Information shall not include public records that by law must be made available to the public pursuant to the Colorado Open Records Act § 24-72-201, *et seq.*, C.R.S. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides

security protection for the information it discloses to the Contractor, the Contractor shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the Contractor has been contracted to maintain, store, or process personal information on the City's behalf, the Contractor is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S., and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

**d. Data Access and Integrity:** The Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards, guidelines, and Data Protection Laws applicable to the Contractor's performance hereunder to ensure the security and confidentiality of all data. The Contractor shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of any data; restrict access to data as necessary; and ensure the proper use of data. The Contractor shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. All data and Protected Information shall be maintained and securely transferred in accordance with industry standards. Unless otherwise required by law, the City has exclusive ownership of all data it discloses under this Agreement, and the Contractor shall have no right, title, or interest in data obtained in connection with the services provided herein.

**e. Data Retention, Transfer, Litigation Holds, and Destruction:** Using appropriate and reliable storage media, the Contractor shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the Contractor's

data retention policies. Upon termination of this Agreement, the Contractor shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Contractor is required by law to retain data, including Protected Information. Upon the City's request, the Contractor shall confirm the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Contractor's exclusive custody, the City may request that the Contractor preserve such data outside of its usual record retention policies. The City will promptly coordinate with the Contractor regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Contractor shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Contractor shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable.

**f. Software and Computing Systems:** At its reasonable discretion, the City may prohibit the Contractor from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information, with Protected Information, received as a result of the Contractor's services under this Agreement. The Contractor shall comply with all requirements, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Contractor shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Contractor shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, enhancements, or updates consistent with evolving industry standards, and periodic penetration testing.

**g. Background Checks:** The Contractor will ensure that, prior to being granted access to Protected Information, the Contractor's agents, employees, subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual instruction of a

nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data.

**h. Subcontractors and Employees:** If the Contractor engages a subcontractor under this Agreement, the Contractor shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the services provided. The Contractor shall monitor the compliance with such obligations and remain responsible for its subcontractor's compliance with the obligations of this Agreement and for any of its subcontractors acts or omissions that cause the Contractor to breach any of its obligations under this Agreement. Unless the Contractor provides its own security protection for the information it discloses to a third party, the Contractor shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both the Contractor and any of its subcontractors, agents, assigns, employees, or volunteers. Upon request, the Contractor shall provide the City copies of its record retention, data privacy, and information security policies.

**i. Security Breach:** If the Contractor becomes aware of an unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of Protected Information or data maintained or provided by the City ("Security Breach"), the Contractor shall notify the City in the most expedient time and without unreasonable delay. The Contractor shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and Data Protection Laws. The Contractor shall preserve and provide all information relevant to the Security Breach to the City; provided, however, the Contractor shall not be obligated to disclose confidential business information or trade secrets. The Contractor shall indemnify, defend, and hold harmless the City for any and all claims, including reasonable

attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach or lawful notices.

**j. Request for Additional Protections and Survival:** In addition to the terms contained herein, the City may reasonably request that the Contractor protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Contractor may reasonably decline the City's request to provide additional protections. If such a request requires the Contractor to take steps beyond those contained herein, the Contractor shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Contractor to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of this Agreement, and the Contractor shall continue to safeguard all data for so long as the data remains confidential or protected and in the Contractor's possession or control.

**34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**Exhibit List**

**Exhibit A** – Scope of Work and Budget.

**Exhibit B** – Certificate of Insurance.

**Exhibit C** – Notice of Award.

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**Contract Control Number:** ENVHL-202582148-00  
**Contractor Name:** MICHAEL'S OF DENVER CATERING INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

ENVHL-202582148-00  
MICHAEL'S OF DENVER CATERING INC.

DocuSigned by:  
*Michael Sudak*  
F5607AD4FDDB466...

By: \_\_\_\_\_

Michael Sudak

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_ President  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## **EXHIBIT A – SOW & BUDGET**

### **I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Services between Denver's Department of Public Health & Environment (DDPHE) and Michaels of Denver Catering for the purpose of preparing and delivering nutritious meals and snacks to children 18 and under in the Denver community at Tasty Food Program sites located throughout Denver, and include but are not limited to, park and recreation centers, nonprofit organizations, senior centers, and local faith-based organizations.

Total Contract term 1/1/2026-12/31/2031 and Maximum Contract Amount: \$3,500,00.00

This contract will also allow other city agencies, including Denver Public Library, Office of Children's Affairs, etc. to utilize the pricing as stated. Michaels of Denver will work directly with each agency to finalize site lists and delivery. Denver Public Library will be utilizing this agreement until 2027 or until otherwise notified.

Tasty Food uses two USDA-funded programs to provide meals to Denver's children and youth, the At-Risk After School Meal Program (ARAS) and the Summer Food Service Program (SFSP).

The At-Risk After School Meal Program (ARAS) operates during Denver Public School academic calendar, typically the first week in September through the third week in May. Year 2025-26 ARAS operation dates are Tuesday, September 8, 2025 through Friday, May 15, 2026. Subsequent school dates will be provided on an annual basis.

For additional information on the ARAS, please refer to the following websites:

- <https://cdphe.colorado.gov/COFoodProgram>
- [https://drive.google.com/file/d/1\\_rnQdEp\\_TV\\_61G3BBY\\_xokPjVW\\_kFwA5/view](https://drive.google.com/file/d/1_rnQdEp_TV_61G3BBY_xokPjVW_kFwA5/view)

Summer Food Service Program (SFSP) operates during Denver Public Schools' (DPS) summer break, typically the first full week in June through the third week in August. Year 2026 operation dates are Monday, June 1st through Saturday, August 15th. Subsequent summer dates will be provided on an annual basis.

For additional information on the SFSP, please refer to the following websites:

- <http://www.cde.state.co.us/nutrition/nutrisummer>
- <https://www.fns.usda.gov/sfsp/summer-food-service-program>

Tasty Food projects a range of 140,000 to 160,000 meals (breakfast, lunch, supper, and snacks) will be served annually across SFSP and ARAS. During ARAS, between 90,000 and 100,000 meals are served across approximately 20-22 sites. During SFSP, between 50,000 and 60,000 meals are served across approximately 25-30 sites. These are projections and may decrease or increase based upon staff capacity associated with DDPHE's sponsorship as SFSP and ARAS have staffing requirements related to the number of sites in operation.

### **II. Services**

The Contractor, also known as a Food Service Management Company (FSMC), must be registered with the Colorado Department of Education (CDE). Any FSMC not currently registered will be required to register (forms are all online: <https://ed.cde.state.co.us/nutrition/manage->



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## EXHIBIT A – SOW & BUDGET

[program-operations/contract-for-meals](https://ed.cde.state.co.us/nutrition/contact-us)) and contact CDE Office of School Nutrition at <https://ed.cde.state.co.us/nutrition/contact-us>

Contractor will prepare meals which meet or exceed the minimum requirements as to the nutritional content as specified by the SFSP Meal Pattern (Section E.5) which is excerpted from the regulations 7 CFR Part 225.16 or an approved National School Lunch Program (NSLP), and the CACFP Meal Pattern, Title 7 CFR 226 Child and Adult Care Food Program, and the following website for ARAS:

[https://drive.google.com/file/d/1\\_rnQdEp\\_TV\\_61G3BBY\\_xokPjVW\\_kFwA5/view](https://drive.google.com/file/d/1_rnQdEp_TV_61G3BBY_xokPjVW_kFwA5/view)

Contractor shall assist with the training of Tasty Food site staff, whether written, virtual or in person. This includes providing information on delivery protocols, inclement weather policies, and other protocols deemed necessary.

### Menus

- A. It is the responsibility of the Contractor to ensure menu compliance with all United States Department of Agriculture (USDA), CDE, and Colorado Department of Public Health and Environment (CDPHE) nutritional guidelines both current and as they develop or change.
  - a. For additional information on nutritional guidelines, refer to the following:
    - i. <https://www.myplate.gov/>
    - ii. <https://cdphe.colorado.gov/COFoodProgram/Meal-Pattern-Policies-and-Memorandums>
    - iii. USDA Food Buying Guide for Child Nutrition Programs for further information or clarity on SFSP/ARAS Meal Pattern Requirements <https://foodbuyingguide.fns.usda.gov/>
  - b. The Contractor shall provide meals that are nutritious and meet all USDA standards. For example, contain minimal trans-fat and no high fructose corn syrup, no fried food, no artificial ingredients, hormone-free, preservative-free, antibiotic-free and organic (as much as possible).
- B. The City requires a menu that has variety and food appeal, to ensure that meals are well received and consumed by youth, ages 3 – 18 years. Meals will be prepared to eliminate choking hazards by age group.
- C. Meals must conform to the cycle menus, quality standards, and food specifications approved by Colorado Department of Education (CDE) and Colorado Department of Public Health and Environment (CDPHE) that the proposal was based upon.
- D. Contractor shall provide menu and any applicable compliance documents that align with CDE and CDPHE regulations at a minimum of 10 business days prior to the new month.
  - a. Contractor shall include milk with meals.
    - i. Milk and milk products are defined as “...fluid types of pasteurized whole milk, low fat milk, skim milk, or cultured buttermilk, which meet state and local standards for such milk....” Milk delivered for the program will conform to these specifications.
  - b. All meat and meat products will have been slaughtered, processed and manufactured in plants inspected under a USDA approved inspection and bear the appropriate seal.
  - c. Commodities shall not be used to prepare meals.
- E. Meals served during the program must be reflective in appearance, quantity, and nutritional quality as provided by FSMC in their submitted proposal.
- F. Menu-Cycle Change Procedure:



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## **EXHIBIT A – SOW & BUDGET**

- a. Once a menu cycle has been approved, changes proposed by the Contractor to the cycle may be made only when agreed upon by the City. In such instances, the City will be contacted by phone or email by the Contractor so that substitutions can be agreed upon and approved. The Contractor will document the changes and email a copy to the City.
- b. The City reserves the right to request menu changes, subject to the allowable rate of reimbursement established by the SFSP/ARAS, if meals are not being well received (consumed) by the children and/or an increase in menu variety will increase Tasty Food participation.
  - i. At minimum, the Contractor will update menu options, annually, to reflect youth preference based on a youth survey administered by DDPHE between the months of January – March, to go into effect in June (start of SFSP).
- c. When an emergency situation exists, which prevents the Contractor from providing a specified meal or meal component, the Contractor will notify the City immediately so substitutions can be agreed upon.

### Ordering System

- A. Contractor shall accept weekly orders through an online ordering system from the City or directly from the City's Tasty Food personnel.
  - a. Weekly orders shall be accepted by the Contractor by 12 pm noon every Tuesday.
  - b. The City will provide the Contractor with a list of personnel who are authorized to place orders.
- B. Contractor shall provide the City the ability to make adjustments after the order has been submitted.
  - a. Order adjustments will take place within an approximate 48-hour window, however, if the Contractor can accommodate an order decrease request within an earlier timeframe, without charging DDPHE, they shall do so.
  - b. Contractor shall allow order adjustments to be rerouted to other Tasty Food sites, if they will be charged to DDPHE regardless, without any additional charge.
  - c. Order adjustments will be allowed due to inclement weather.

### Food Safety & Handling Requirements

- A. Contractor shall ensure all quality, health, and sanitation requirements are met at all times, which includes, but are not limited to:
  - a. Meals will be prepared under the appropriate, controlled temperatures and assembled not more than 24 hours prior to delivery.
  - b. Perishables will be cooled/refrigerated/warmed during preparation and transported in a manner consistent with USDA standards and all laws to ensure safe food handling procedures.
  - c. Proper temperatures shall be maintained during the preparation and delivery of all meals to insure wholesomeness of food at the time of delivery and in accordance with State and local health codes.
  - d. All equipment used to transport and hold food and beverages will be sanitized by the contractor on a consistent and timely basis to ensure cleanliness.
  - e. Contractor shall ensure the meal preparation site is periodically inspected by local health authorities or independent agencies.



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

**EXHIBIT A – SOW & BUDGET**

- f. Contractor will submit results of the inspection to a DDPHE representative within one week after an inspection is conducted.
- g. During food preparation, the Contractor should regularly inspect and measure items to ensure correct sizes and weights.

Packing, Delivery, Storage

- A. Meal delivery and assembly shall not be subcontracted.
- B. Provide each Tasty Food site with a Production Record (delivery receipt) in accordance with ARAS (CDPHE) and SFSP (CDE) requirements, outlining such things as (1) quantity of each meal component, (2) size of each meal component, (3) allergen information, including an allergen key.
- C. Proper and professional packaging will be utilized for hot meals, cold meals, and snacks. Ideally, all packaging will be labeled with the My Kid’s Lunch name and logo.
- D. Supplies of utensils and/or condiments not requiring refrigeration can be provided in advance to cover any minor shortage; however, this in no way reduces the Contractor’s obligation to make its best effort to provide them as part of the packaged, daily, delivered meal.
- E. Food must be delivered at its appropriate temperature, and foods that are delivered without appropriate temperature regulation will not be accepted.
- F. Frozen food will not be accepted.
- G. Contractor shall transport equipment owned by the City between Tasty Food sites, as needed. This includes, but is not limited to, mid-size industrial hot boxes.
- H. The Contractor will create a delivery schedule for each site based on optimal food safety measures (in relation to each sites serving time). New delivery windows are required, annually, for CFP and SFSP. Contractor will adjust delivery windows to accommodate holiday serving times for the weeks of Thanksgiving, Christmas, New Years Day, and Spring Break.
- I. Deliveries are still expected during inclement weather for both indoor and outdoor Tasty Food sites.
- J. Contractor will deliver all meal and snack components to each site on a daily basis, Monday – Friday, unless otherwise agreed upon. Contractor will not leave a delivery unattended, especially outdoors.
  - a. Single deliveries for multiple meals (e.g. breakfast and lunch) are allowed only at sites that are equipped with adequate storage and holding equipment.
  - b. Perishables will be delivered in food safe equipment only (insolated coolers with ice packs, warmer bags, etc.). No plastic bins with detachable lids are allowed. Contractor will allow the food safe equipment to remain at the site, daily, until it’s time to serve, if previously arranged by DDPHE.

Meal Rejection

- A. All meals must be wholesome at the time of delivery and meet the SFSP/ARAS meal requirements. Any meals, which do not comply with the requirements and specifications herein, will be rejected, and the Contractor agrees to forfeit payment for rejected meals; unless the Contractor is able to remediate problem(s) prior to the start of meal service.
- B. The City reserves the right to reject meals and deny payment to the Contractor under the following circumstances:
  - a. An imbalance between the number of milks and the number of meals
  - b. Meals with components that are less than the required size, weight, or temperature



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## EXHIBIT A – SOW & BUDGET

- c. Incomplete meals
- d. Meals that are improperly packaged, i.e. containers that are broken, torn, or open
- e. Meals that are wholly or partially spoiled or unfit to eat
- f. Frozen meals
- g. Same fruit or vegetable component used to meet 3/4 c. fruit/vegetable requirement
- h. Changing meals or substituting components without the City's prior approval
- i. Meals that are not delivered according to the established delivery schedule
- j. Meals that do not meet the minimum requirements established by CDE and CDPHE
- k. Meals that do not otherwise meet the meal requirements applicable to Tasty Food
- l. Meals that vary from the menu cycle, e.g. same fruit/meals/snacks provided week after week

### Sites

- A. The City will provide the names and addresses of Tasty Food sites at minimum twice a year, in August and May. List of the City's current Tasty Food service sites:  
[https://docs.google.com/spreadsheets/d/1p\\_T9JiiGVrrz3tCG9-FSIYzYx6AZty5NGrUOX0JgYzs/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1p_T9JiiGVrrz3tCG9-FSIYzYx6AZty5NGrUOX0JgYzs/edit?usp=sharing)
  - a. Tasty Food service sites are subject to change. If the City or the Contractor is made aware of any site additions or drops, an email will be sent to either the Contractor or the City within 48 hours.
  - b. The City reserves the right to add or remove Tasty Food service sites by amendment of the current Tasty Food services site list.
  - c. The City will notify the Contractor of additional sites in advance to allow the Contractor time to incorporate them into delivery routes.
  - d. The City reserves the right to change the level for the maximum number of meals which may be served under the program at each site.
- B. The City shall not have more than 45 sponsor affiliated and unaffiliated sites, combined, unless otherwise agreed upon.

### Accessibility

Under Title II of the Americans with Disabilities Act (ADA), the City & County of Denver is required to ensure that programs, services, and activities are accessible to persons with disabilities. This requirement also extends to any vendor contracted by the City & County of Denver to provide a program, service, and activity.

Under this requirement, any official communication from the City & County of Denver, intended for the general public and/or participants in any official City program, must be accessible for individuals with disabilities. Moreover, any communication with persons with disabilities must be as effective as communication with others. Persons with disabilities must be afforded the opportunity to access the same information and engage the same services and do so with substantively equivalent ease.

In meeting accessibility requirements, the contractor shall:

- a. Provide menus a minimum of 10 business days prior to the start of a month, that are accessible to persons with disabilities, including:
  - a. individuals who are blind or have limited vision,
  - b. are deaf or hard of hearing,
  - c. have mobility or dexterity limitations,



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## EXHIBIT A – SOW & BUDGET

- b. Products should meet applicable accessibility requirements (minimum WCAG 2.0 AA, Section 508 of the Rehabilitation Act of 1973), including, but not limited to:
  - a. Appropriate color contrast ratio between text and background,
  - b. Logical structure and sequencing of text,
  - c. All text can be accessed by keyboard navigation,
  - d. Navigation is consistent,
  - e. Significant information is not indicated solely by use of color for emphasis.
- c. In the case of inaccessible features or characteristics, provide options for improving accessibility through easily effected alternatives;
- d. Provide the City & County of Denver with documentation of the methods used to determine accessibility (i.e. manual and automated testing)
- e. Be willing to modify any completed product as needed to enhance accessibility.
- f. The Contractor and DDPHE must follow current federal and state regulations regarding meals provided to children with special dietary needs for enrolled students:
 

<https://www.cde.state.co.us/nutrition/nationalschoollunchprogramrequirements#specialdietaryneeds>

  - a. Exceptions for disability reasons: FSMC must make modifications in meals for children who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet. Modifications must be made on a case-by-case basis. Meal modifications that fall outside the required meal pattern can be made when supported by a written medical statement. Modifications that can be made within the required meal pattern at the discretion of the FSMC and sponsor.
  - b. Exceptions for non-disability reasons: FSMC, with instructions from the sponsor, may make modifications for children without disabilities who cannot consume the regular meal because of ethical, cultural, religious reasons or other preferences. Modifications made for dietary preferences must meet meal pattern requirements established under 7 CFR 210.10 and 7 CFR 220.
  - c. Meal modification approval: The approval for meal modifications must remain in effect until the medical authority or the child's parent or legal guardian revokes such request, or until such time as the FSMC and sponsor changes their meal modifications policy.
  - d. Required Documentation: Information about meal modifications must be included in the following documents: (1) medical statements or preference forms, (2) production records (3) recipes (4) HACCP plans and (5) meal counting and claiming tracking. Production records should indicate the meal substitutions/accommodations and the number of meals served for special diets.

Child Nutrition program operators and sponsors must follow all civil rights regulations to ensure all eligible persons receive program benefits in a non-discriminatory manner. Civil rights are the nonpolitical rights of citizen; the rights of personal liberty guaranteed to U.S. citizens by the 13th and 14th Amendments to the U.S. Constitution and acts of Congress. Please see [https://drive.google.com/file/d/1A3r8gJ-MsOu8p2QcqbogrVS5QJQMzjo\\_/view](https://drive.google.com/file/d/1A3r8gJ-MsOu8p2QcqbogrVS5QJQMzjo_/view). The Contractor will follow all civil rights requirements outlined in the following web link and will include the non-discrimination statement on all program material.

<https://www.cde.state.co.us/nutrition/nationalschoollunchprogramrequirements#civilrights>

### III. Process and Outcome Measures


**A. Process Measures**

- I. Co-maintain tracking spreadsheet, provided by DDPHE, that includes, but is not limited to, the following issues identified by the FSMC or the City: Food quality, Late delivery, Cooler or ice pack issues, etc. Contractor and the City shall track communication dates and actions taken to remedy.
  - a. Contractor shall respond and be acting in good faith to remedy an issue brought to them based on the following timelines, unless otherwise agreed upon.
    - i. Same Day:
      1. “Hotshot” missing and/or damaged (spoilage, seals broken, etc.) meals and/or meal components to a site(s) prior to the start of the site’s serving time.
    - ii. Within 24 Hours:
      1. Address issue(s) regarding missing and/or damaged meals and/or meal components.
      2. Address issue(s) regarding equipment cleanliness, including coolers, ice packs, warmer bags, etc.
      3. Address issue(s) regarding deliveries (tardy arrivals, no production record provided, etc.)
    - iii. Within 48 Hours:
      1. All other issues
- II. Based on an annual City implemented survey that gathers information on meal and snack satisfaction among Tasty Food participants, the Contractor shall:
  - a. Annually, implement up to three (3) hot menu and up to three (3) cold menu and up to three (3) snack menu recommendations from a City provided list of menu recommendations, unless otherwise agreed upon.
  - b. Changes may include adding, removing or swapping components.
  - c. All menu edits should be applied from June 1 to May 31.
  - d. The implemented changes shall not impact the current meal or snack reimbursement rate.

**B. Outcome Measures**

- I. Number of meals provided on a monthly basis by site
- II. Number of snacks provided on a monthly basis by site
- III. Number of damaged or inedible meals, snacks and/or milks that were delivered on a monthly basis by site
- IV. Annual Local Food Sourcing Report
  - a. Target of at least twenty-five percent (25%) of food purchased through the Contractor’s supply chain are from sources that are grown or processed entirely within Colorado.
  - b. Compliance is based on the physical address at which a given food product is grown and/or processed.
  - c. Compliance will be based on the total dollar value of all locally grown or processed food that the Contractor uses within its meals and snacks in a



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## EXHIBIT A – SOW & BUDGET

- given year as a percentage of the total dollar value of all food that the Contractor uses within in meals and snacks for the Tasty Food program.
- d. For Contractors with more than one contract with Denver to supply food, the Contractor shall calculate the annual compliance calculation on a contract-by-contract basis.

### IV. Performance Management and Reporting

#### A. Performance Management

The Contractor and the City will meet to review successes, challenges and areas for quality improvement at least once during the fall semester, spring semester and the summer, annually.

The City will monitor this contract. For detailed information on the monitoring process, refer to the following:

- [https://www.fns.usda.gov/sites/default/files/sfsp/Monitors\\_Guide.pdf](https://www.fns.usda.gov/sites/default/files/sfsp/Monitors_Guide.pdf)
- [https://drive.google.com/file/d/1\\_rnQdEp\\_TV\\_61G3BBY\\_xokPjVW\\_kFwA5/view](https://drive.google.com/file/d/1_rnQdEp_TV_61G3BBY_xokPjVW_kFwA5/view)

The quality of services provided and the effectiveness of those services addressing the needs of the program: <https://www.fns.usda.gov/sfsp/administration-guide>

1. **Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. DDPHE program administrator will manage any performance issues and will develop interventions to resolve concerns.
  - a. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
    - A. CDE and CDPHE will conduct administrative reviews of the sponsor's operations, and the results of the review may affect the amount of reimbursement a sponsor will receive and the payment to the FSMC.
    - B. CDE and CDPHE must also inspect the FSMC's facilities as part of the sponsor review or as part of a meal quality test.
      1. The FSMC shall cooperate with and ensure the resolution of Vendor facility reviews conducted by CDE or CDPHE.
    - C. Authorized representatives of the City, CDE, CDPHE, USDA and USDA's Office of the Inspector General (OIG) shall have the right to conduct on site administrative reviews of the food service operations.
  - b. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of the program administrator. The program administrator will review the quality of each submitted invoice. The program administrator will manage invoicing issues through site visits and review of invoicing procedures.
2. **Non-Performance or Non-Compliance**



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

**EXHIBIT A – SOW & BUDGET**

- a. In cases of nonperformance or noncompliance on the part of the Contractor, the Contractor shall pay the City for any excess costs the City incurs by obtaining meals from another source.
- b. The Contractor shall forfeit payment for meals that are not ready within 1 hour of delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in this agreement.
- c. Neither the CDE, CDPHE, nor the USDA assumes liability for payment of any differences between the number of meals delivered by the Contractor and the number of meals served by the City that are eligible for reimbursement.
- d. The City shall reserve the right to hold the Contractor accountable for failure to comply with the terms of the contract.

**3. Records Retention**

- a. All books and records are made available to representatives of the State, USDA, and US General Accounting Office as well as CDE, CDPHE and the City and County of Denver at any reasonable time and place for a period of three years and four months from the date of receipt of final payment under the contract or until all audit issues are resolved.
- b. Contractor shall maintain full and accurate records for a period of three (3) years and four (4) months after the end of the program year, which document:
  - i. Menus provided during the term of this agreement.
  - ii. A listing of components of each meal.
  - iii. An itemization of the quantities of each component used to prepare each meal.
  - iv. A list of approved SFSP and ARAS sites and their average daily participation provided by Tasty Food.

**B. Reporting**

The Contractor shall provide reports in accordance with applicable federal, state, or local laws, statutes, ordinances, rules, regulations policies, procedures, or directives. The following documents shall be provided to the City as stated below;

Document Type	Description	Frequency	Document to be sent to:
Invoice	Electronic Format; See Invoicing Section for details	Weekly – Close of Business on Monday	DDPHE Program Administrator
Menu	Electronic Format	Monthly – 10 business days in advance of a new month	DDPHE Program Administrator
Production Record	Hard copy Includes an allergen key, quantity of each meal component, and size of each meal component.	Weekly to TF sites	Site staff; DDPHE Program Administrator
Portion Guide	Electronic Format	Every 6 weeks according to menu cycle	DDPHE Program Administrator



**EXHIBIT A – SOW & BUDGET**

Local Food Sourcing Report	Electronic Format; See Local Food Sourcing section for details.	Annually, October 15	DDPHE Program Administrator
Year End Financial Statement	Electronic Format	Annually, January 31	DDPHE Program Administrator

Local Food Sourcing

In accordance with Executive Order 149, Good Food Purchasing Program, public meal programs shall utilize the Good Food Purchasing Program core values of environmental sustainability, boosting local economies, racial equity, a valued workforce, good nutrition, and animal welfare. “Public meal programs” refers to meals that the City or its Contractors or Vendors provides to members of the public pursuant to a federal, state, or local program.

The City has a goal to acquire at least twenty-five percent (25%) of food purchased through its supply chain from sources that are grown or processed entirely within Colorado, by 2030. In response to this City policy, the Contractor is required to provide an annual Local Sourcing Report. The report shall include the following:

- A. Program and information, including documentation, of processes used to track local purchases.
- B. Guidance for calculating and preparing a report, please note the following:
  - a. “Food” includes both food and beverages, e.g. milk, juice, etc.
  - b. “Grown in Colorado” includes if the farm, ranch, or orchard on which the food is grown is physically located in Colorado.
  - c. “Processed in Colorado” includes if the plant at which processing takes place is physically located in Colorado.
    - i. “Processing” refers to the work done to convert raw agricultural products into the form in which the food is delivered to the Contractor. Processing includes, by way of example (and not limitation), salting, smoking, pickling, preserving, freeze drying, canning, bottling, distilling, brewing, grinding, roasting, malting, baking, cooking, pasteurizing, homogenizing, etc.
    - ii. Food that goes through any such process in Colorado is deemed processed in Colorado regardless of whether any of the ingredients in the final product were grown in Colorado. For example, and not limitation:
      - 1. If fruit is imported into Colorado and then converted to juice in Colorado, the resulting juice product is deemed to be processed in Colorado.
      - 2. If cabbage is imported into Colorado and then converted to coleslaw or sauerkraut in Colorado, the resulting product is deemed to be processed in Colorado.
      - 3. If milk is imported into Colorado and then converted to cheese or ice cream in Colorado, the resulting product is deemed to be processed in Colorado.
  - d. Distribution of food is not the same as growing or processing. The address of a food distributor, its warehouses, and its business offices are irrelevant.

**V. Budget & Invoicing**



**EXHIBIT A – SOW & BUDGET**

Budget and Reimbursement

Prices established in the contract shall remain firm through the term of each program. Both SFSP and ARAS have their own pricing rates. SFSP rates are published each February and ARAS each July.

This pricing is also established for any city agency requirements.

Pricing includes price of food, milk, packaging, transportation, and all other related cost (e.g. utensils, napkins, fuel charges, etc.).

If the Contractor would like to provide nutrition education to compliment the food program, it will do so at the FSMC’s own cost. The City will not provide duplication or distribution services.

**Colorado Food Program Reimbursement Rates:**  
Rates are effective from July 1, 2025 through June 30, 2026.

	BREAKFAST	LUNCH/SUPPER		SNACK
		Cash-in-lieu	Regular	
FREE	\$2.46	\$4.905	\$4.60	\$1.26
REDUCED	\$2.16	\$4.505	\$4.20	\$0.63
PAID	\$0.40	\$0.745	\$0.44	\$0.11

**Summer Food Service Program Reimbursement Rates:** Summer 2026 reimbursement rates will be provided by the USDA in April 2026

The Fixed fee per meal/Meal Equivalent may be increased on an annual basis for each program (SFSP and ARAS) on the anniversary for each program. Proposed price increases will not exceed the following Consumer Price Index (CPI) by the Yearly Percentage Change in the CPI for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home. All price increases must be submitted at a minimum 2 months before anniversary of each program. (E.g. SFSP’s proposed price increase will be by April 1 of each year.)

The process by which the biannual price adjustments will be handled is as follows:

- a. Contractor fees may be increased only up to the Consumer Price Index (CPI) for Meals away from Home. Fee increases, including Allocated Charges, must be linked to the stated CPI. For example, the CPI for 2025 through September 2025 is 3.7%. DDPHE will provide the CPI to FSMC.
- b. If the FSMC is seeking a price increase for the upcoming program term, the FSMC shall submit a request in writing to the DDPHE Program Administrator for a price increase, no later than fifteen (15) days prior to the start of each program.
  - a. The City shall respond in writing whether or not the requested price increase is agreeable and in alignment with CPI data and CO State reimbursement rates, and a formal revision to the resulting contractual agreement shall be issued by the City to implement the price increase(s) as allowed.

Contractor acknowledges that all payments are subject to the applicable rate of reimbursement allowed by the SFSP/ARAS.



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## **EXHIBIT A – SOW & BUDGET**

The Contractor acknowledges that all payments by the City under this contract, whether in whole or in part, are subject to and contingent upon the continuing availability of federal funds for the purposes of SFSP/ARAS. In the event federal funds, or any part thereof, are not awarded or reimbursed to the City or are reduced or eliminated by the federal government, the City may reduce the total amount of compensation to be paid to the Contractor by revising the scope of services and budget, or it may terminate the resulting Agreement.

The budget for this contract shall not exceed \$3,500,000 over the course of five (5) years, unless otherwise agreed to. The City reserves the right to increase or decrease the budget based on City, State or Federal funding constraints.

### Invoicing

- A. Contractor shall ensure invoices are completed and submitted to the DDPHE Program Administrator on a weekly basis, no later than close of business on Monday, for the previous week's orders.
  - a. Each invoice shall include:
    - i. The Contract number
    - ii. A unique invoice number and date
    - iii. Individual itemization of the goods/services
    - iv. Per unit price, extended and totaled
    - v. Quantity ordered, back ordered and shipped
    - vi. Ordering department's name and "ship to" address
    - vii. Dates on invoices must match dates of delivery
    - viii. Agreed upon payment terms set forth herein
  - b. Invoices shall indicate the total number of meals (and milk as applicable) included in the delivery to each site on each day.
  - c. If applicable, site supplies ordered
  - d. Invoices shall be submitted in PDF
- B. Additional copies of invoices may be requested.
- C. The Contractor shall submit revised, daily invoices when necessary to credit the City for any meals not accepted by the City due to crushing, spoilage, or other negligence.
- D. If an invoice discrepancy occurs, the Contract shall correct the mistake immediately and provide DDPHE with a new invoice.

### **COOPERATIVE PURCHASING**

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this contract that pricing offered herein to the City and County of Denver may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

The Contractor must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area, contractual disputes, invoicing, and payment. The City and County of Denver shall not be liable for any costs, damages incurred by any other entity.



**DENVER**  
PUBLIC HEALTH &  
ENVIRONMENT

## **EXHIBIT A – SOW & BUDGET**

### **PERFORMANCE BONDS AND SURETIES**

The Contract shall furnish a performance bond, in the amount of not less than 10 percent (10%) of the value of the Contract which shall be in the form of a firm commitment only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow contractors to post any “alternative” forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

When performance bond is furnished by the Contractor, it must be executed by the owner, a general partner or, if a corporation, the secretary's signature and the seal of the corporation must be Affixed.

Performance bonds shall be held for the duration of the Contract.

### **VI. Denver Public Library (DPL) - Healthy Food for Denver's Kids Program (HFDK)**

#### **Ordering Process and Frequency**

- A. Snacks are ordered by each individual library branch's point of contact. Each branch has two staff members supporting the program per location.
- B. Snacks are ordered online through the Michael's of Denver/ Tasty Foods website.
- C. Each Point of Contact has their own personal login to access the ordering portal.
- D. Each Point of Contact follows these Instructions to place snack orders.
- E. Snacks are currently distributed at 15 DPL locations provided by DPL with 4 additional locations on hiatus due to library renovations.
- F. Perishable and shelf-stable options are available.
- G. Branches determine order frequency. Snacks can be ordered weekly, bi-weekly, or monthly.
- H. All Snack orders - to be delivered the following week - must be ordered by noon on Tuesdays.
- I. Snacks are delivered to branches every Tuesday.

#### **Menu**

- A. DPL has specific menu/ list of available foods to order created by DPL in collaboration with HFDK and Michael's Catering.
- B. All foods available for DPL staff to order from their specific menu meet HFDK's nutritional requirements.
- C. All foods available for DPL from their specific menu are listed as individual items. The menu eliminates bundles. For example, cookies and milk are bundled items but, DPL specific menu lists milk as an individual item allowing DPL to distribute milk to youth without having to also distribute cookies. Cookies do not meet the HFDK's nutritional requirements.
- D. DPL menu is approved by HFDK to order and distribute all of the food on their specific menu.
- E. Having a specific menu of available food frees staff from having to make on the spot nutritional decisions or do research into an item themselves. It also keeps all 19 branches in compliance with HFDK grant universal requirements and creates a standard in their system.
- F. The quantity of snacks ordered is based on branch knowledge of their youth. Points of Contact can alter their snack totals as holidays, summer vacations, and branch hours change and affect library customers.





**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

**COLORADO DEPARTMENT OF EDUCATION (CDE) SCHOOL NUTRITION  
UNIT CHILD NUTRITION PROGRAM PERMANENT AGREEMENT**

This permanent agreement is applicable to the National School Lunch, School Breakfast, Special Milk, Seamless Summer Option, Afterschool Snack, Summer Food Service, and Fresh Fruit and Vegetable Programs.

The signed agreement must be uploaded in the Colorado Nutrition Portal.

<b>Name of School Food Authority/Sponsor Organization:</b> City & County of Denver, Office of Children's Affairs	<b>Mailing Address (Street, City, State, Zip):</b> 201 W. Colfax Ave., Dept. 1101 Denver, CO 80202
<b>Authorized Representative:</b> Dwight Jones	<b>Title:</b> Executive Director
<b>Telephone:</b> 720-913-0913	<b>Email address:</b> dwight.jones@denvergov.org

**I. Permanent Agreement Intention**

Describing this agreement as "permanent" is intended solely to convey that the agreement has no predetermined expiration date. Such agreements may be amended as necessary to ensure compliance with all federal requirements. In no way does this feature of the agreement create contractual obligations beyond those described in the agreement; nor does it preclude either party from terminating the agreement in accordance with program regulations. Permanent agreements shall be terminated for cause by the state agency if the institution fails to adhere to program requirements.

For the purposes of this agreement, the School Food Authority or Sponsoring Agency who will be operating federal Child Nutrition Programs under this agreement is herein referred to as 'Sponsor'. The CDE School Nutrition Unit is herein referred to as the 'State Agency'. Each Sponsor where food service is provided and reimbursement from federal Child Nutrition program funds is requested shall enter into a written agreement with the Colorado Department of Education (CDE). (7 CFR 210.9; 1 CCR 301-3, 301-11; 2202-R 200.00-203.05; 2245-R 3.03; 7 CFR 225) The Sponsor and participating sites under its jurisdiction, shall comply with all provisions of 7 CFR 210 and 245.

Reimbursement from federal funds may not be made to the Sponsor unless an approved current permanent agreement is on file at CDE. (7 CFR 210, 215, 220, 225; 2 CFR Part 200)



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

**II. The State Agency Agrees:**

To reimburse the Sponsor in connection with meals served in accordance with program regulations, applicable to the United States Department of Agriculture (USDA) Child Nutrition Programs (CNP): National School Lunch Program (NSLP), Afterschool Snack Program, Seamless Summer Option Regulations (7 CFR 210), Special Milk Program (SMP) Regulations (7 CFR 215), School Breakfast Program (SBP) Regulations (7 CFR 220), Summer Food Service Program (7 CFR 225) and Fresh Fruit and Vegetable Program (FFVP) Regulations (including Section 19 of the Richard B. Russell National School Lunch Act and the FFVP Handbook for Schools).

The State Agency shall terminate the Sponsor's participation in a CNP by written notice whenever it is determined by the State Agency that the Sponsor has failed to comply with the program regulations. The State Agency shall inform the Sponsor of its rights to request a review of decisions made by the State Agency which affect the participation of the Sponsor in the CNP or the Sponsor's claim for reimbursement.

**III. The Sponsor Agrees:**

A Sponsoring official shall complete an application for any CNP including individual site applications for any site planning to operate a CNP. The information contained in the application will be used to determine eligibility for program participation. The Sponsor must be accountable for following the sections of this agreement that correspond with the CNPs that it is approved to participate in by the State Agency.

The Sponsor shall also submit for approval a Free and Reduced Price Policy Statement in accordance with 7 CFR 245.

The Sponsor shall retain final financial and administrative responsibility for its CNPs.

Failure to comply with these rules or the spirit and intent of the USDA rules and regulations will make the agreement subject to review and possible termination after notice.

**IV. Civil Rights**

Comply with the requirements of Civil Rights citations of 7 CFR 210.23 (b). The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, religious creed, disability, age, political beliefs be excluded from participation in, be denied the



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant

received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.

**V. Child Nutrition Program Requirements:**

**Financial Management**

Sponsors must conduct food services that are not for profit and comply with the requirements of the (USDA) regulations regarding financial management (2 CFR Part 200, as applicable, and 1 CCR 301-11: 2245-R 3.03 and 225.14). All of the CNP reimbursement funds are used solely for the operation or improvement of such food service.

**Record Retention**

Upon request, the Sponsor must make all accounts and records pertaining to the CNP available to the State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. CNP records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.

Records must be kept in such a way as to substantiate the claims of the Sponsor and meet the requirements of the United States Department of Agriculture.

Retain the individual applications for free and reduced price lunches and snacks submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified above.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

Retain documents related to the school nutrition eligibility processes for 5 years plus the current year or until an audit is closed for CDE school finance.

**Food Preparation and Storage**

Maintain necessary facilities for storing, preparing and serving food.

Maintain, in the storage, preparation, and service of food, proper sanitation and health standards in conformance with all applicable state and local laws and regulations, and comply with the food safety requirements of 7 CFR 210.13.

**USDA Foods**

Enter into an agreement to receive donated foods as required by 7 CFR 250. Sponsors enter into written agreement with the Colorado Department of Human Services, Food Distribution Unit, for the receipt and use of USDA donated foods.

Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the USDA.

**Food Service Management Companies and Vended Meals**

The Sponsor agrees to comply with all regulations related to 1 CCR 301-3: 2202-R-203.00.

Sponsors may contract for the services of a Food Service Management Company (FSMC) or vended meals and must follow all procurement requirements.

Sponsors must utilize the Request for Proposal (RFP) and contract prototypes and procedures as provided by the State Agency.

All RFP documents must be approved by State Agency prior to release of the RFP. All contracts must be approved by the State Agency prior to the execution of the contract.

**A. National School Lunch Program (NSLP) Requirements, including Seamless Summer Option and Afterschool Snack Program:**

**Financial Management**

Comply with the requirements of the (USDA) regulations regarding financial management (2 CFR Part 200, as applicable, and 1 CCR 301-11: 2245-R 3.03.)



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

A separate fund shall be maintained for the food service program, in order to identify all allowable and reportable expenditures and revenues related to the federal grant program.

A school food authority must use the food service special revenue fund for all food service transactions. A district that is not a school food authority must not use the food service special revenue fund.

Maintain a nonprofit school food service and observe the requirements for and limitations on the use of nonprofit school food service revenues set forth in 7 CFR 210.14 and the limitations on any competitive school food service as set forth in §210.11; 1 CCR 301-11: 2245-R 3.03.

Food service funds shall not be used to pay salaries or wages for dining room supervision. 1 CCR 301-11: 2245-R 3.03(5)

Limit the fund's net cash resources to an amount that does not exceed 3 months average expenditures based upon a nine month operating year for its nonprofit school food service or such other amount as may be approved in accordance with §210.19(a).

Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year must remain in the funds, shall be used for the support of the food service program pursuant to State Board rules, and shall not be used for any other purpose.

For each school year, indirect costs or direct charge of indirect cost items may be recovered from the food service fund, but shall be limited to that amount established by the approved non-restricted indirect cost rate as determined by CDE under the federal indirect cost rate agreement.

The Sponsor, in operating its food service program, shall conform to established state and federal audit requirements.

Capital equipment purchases must be made based upon the State Agency approved equipment list or prior approval process. As stated in Section 22-32-120(2), C.R.S., capital outlay and equipment rental costs shall not be included in computing the cost of reimbursable school meals served. Therefore, revenue from fees charged to students for reimbursable meals shall not be used to purchase capital outlay or pay for equipment rental costs.

As stated in Section 22-32-120(1)(a). C.R.S., food service facilities shall be deemed to be an integral part of the district and shall be maintained, operated, and governed in the same manner as the schools of the district. As such, expenditures including but not limited to new kitchens with new equipment related to new school construction and to major renovations of school facilities are the responsibility of the district from other district funding sources.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

### **Meals/Milk**

Meals/milk claimed for reimbursement shall meet current requirements established by the USDA under the National School Lunch Act and Special Milk Program.

For each site, all students will have an opportunity to be served and have reasonable time to consume their meals, in keeping with the Basis and Purpose in 1 CCR 301-3: 2202-R 200.01.

Each meal claimed for reimbursement must be priced as a unit. Unit prices shall be specified in the agreement and are subject to change only upon written agreement between the Sponsor and State Agency.

Free and reduced price meals and milk shall be provided as outlined in the Free and Reduced Policy of the Sponsor. (7 CFR 245).

Lunches must be served during the lunch period, which meet the minimum requirements prescribed in 7 CFR 210.

### **Claims**

Submit claims for reimbursement in accordance with §210.8 and 7 CFR 210.10.

Claim reimbursement at the assigned rates only for reimbursable free, reduced price, and paid meals/milk served to eligible children in accordance with 7 CFR 210 and 7 CFR 215.

Count the number of free, reduced price, and paid reimbursable meals/milks served to eligible children at the point of service, or through another counting system if approved by the State Agency. If electing to serve milk at no charge only to needy children under 7 CFR 215.7(d)(2), the SFA agrees to serve milk free to all eligible children, at times that milk is made available to non-needy children under the SMP.

The Sponsoring official signing the claim shall be responsible for reviewing and analyzing meal/milk counts to ensure accuracy as specified in 7 CFR 210.8 and 7 CFR 215.10(d) governing claims for reimbursement.

Failure to submit accurate claims will result in recovery of an over claim and may result in withholding of payments, suspension, or termination of the program as specified in 7 CFR 210.25 and 7 CFR 215.16. If failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in 7 CFR 210.26 shall apply.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

**Free and Reduced Price School Meal Eligibility**

Maintain files of currently approved and denied free and reduced price applications, which must be readily retrievable by school.

Maintain documentation and records related to methodology used to calculate the identified student percentage (ISP) if implementing the Community Eligibility Provision (CEP). 7 CFR Part 245.9

Maintain documentation and records used to establish base year claiming percentages if implementing Provision 2. 7 CFR Part 245.9

Maintain files of the names of children currently approved for free meals through Direct Certification with the supporting documentation, as specified in 7 CFR 245.6(b)(5), which must be readily retrievable by school.

Documentation for Direct Certification must include information obtained directly from the appropriate state or local agency, as specified by FNS, as defined in 7 CFR 245.2. If a child in the family is receiving benefits from SNAP, TANF (BCA or state diversion), Medicaid, FDPIR, all children in that family are considered to be directly certified. By signing this permanent agreement, the Sponsor is aware of and agrees with the participation of CDE, School Nutrition in the Medicaid direct certification demonstration project. Beginning in SY2023-24, the CDE, School Nutrition direct certification system will include state Medicaid data for Sponsors to directly certify students for free or reduced price school meals. Also, if the child is a homeless child, runaway child, migrant child, foster child, or a Head Start/Even Start child, he is categorically eligible for free meals.

No later than December 31 of each year, the Sponsor will provide the State Agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October.

In addition, each SFA shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the elementary schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

**Competitive Food Service**

Competitive foods means all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the school campus during the school day. The Sponsor agrees to comply with the competitive food service and standards outline in 7 CFR 210.11.

The Sponsor agrees to comply with the policy on exempt fundraisers as outlined by the State Agency.

The Sponsor agrees to comply with the requirements outlined in 1 CCR 301 3:201.00 regarding the Colorado Competitive Food Service Policy.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

**Colorado Healthy Beverages Policy:**

Beverages sold to students on school grounds during the regular and extended school day shall, at a minimum, meet the required nutritional standards as required in 1 CCR 301-79 Rules for the Administration of The Healthy Beverages Policy.

**Additional Colorado Programs:**

Sponsors must follow all additional requirements for the Start Smart Nutrition Program in 22-82.7-101 et seq., C.R.S., Child Nutrition School Lunch Protection Program in 22-82.9-101 et seq., C.R.S., and the Breakfast after the Bell Nutrition Program in 22-82.8-101 et seq., C.R.S.

**B. Afterschool Snack Requirements:**

Those Sponsors with eligible schools (as defined in 7 CFR 210.10 (n)(1)) that elect to serve meal supplements (snacks) during afterschool snack programs shall agree to:

- Serve snacks that meet the minimum requirements prescribed in 7 CFR 210.10.
- Price the snack as a unit.
- Serve snacks free or at a reduced price to all children who are determined by the SFA to be eligible for free or reduced price school meals under 7 CFR 245. If charging, the charge for a reduced price snack shall not exceed 15 cents.
- Claim reimbursement at the assigned rates only for snacks served in accordance with the agreement and for no more than one snack per child per day.
- Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year.
- An afterschool snack program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter.

**C. Fresh Fruit and Vegetable Program (FFVP) Requirements:**

If the Sponsor is selected to participate in the FFVP, the Sponsor agrees to participate in and implement the U.S. Department of Agriculture Fresh Fruit and Vegetable Program (FFVP) as authorized by Section 19 of the Richard B. Russell National School Lunch Act.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

Sponsors selected to participate in the Fresh Fruit and Vegetable Program shall:

- Utilize the FFVP grant funds only for approved schools under its jurisdiction for the service of approved fresh fruits and vegetables in accordance with local, State, and Federal regulations and requirements as authorized by Section 19 of the Richard B. Russell National School Lunch Act.
- Abide by all requirements for administering and oversight of the FFVP as stated by Section 19 of the Richard B. Russell National School Lunch Act, the Fresh Fruit and Vegetable Program Handbook and in accordance with the plan outlined in the signed school application for the FFVP.
- Prepare and submit a monthly claim for reimbursement, and retain supporting documentation and records as required by the U.S. Department of Agriculture.
- Participate in the FFVP training annually as offered by the State Agency.
- Understand the State Agency may recover, withhold, or cancel payment up to one hundred percent (100%) of the funds made available under this agreement, if an approved school fails to implement and operate the FFVP properly.

**D. Summer Food Service Program Requirements:**

Sponsors that elect to serve meals (breakfast, lunch, supper, and snack) during the summer shall:

- Operate a nonprofit food service during any period from May through September for children on school vacation, or at any time of the year, in the case of sponsors administering the Summer Food Service Program under a continuous school calendar system; during the period from October through April, if it serves an area affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.
- Certify that all sites comply with eligibility requirements and serve eligible participants based on site type.
- Serve meals which meet the requirements and provisions set forth in 225.16 and during times designated as meal service periods, and serve the same meals to all children;
- Serve meals without cost to all children, except camps and conditional non-congregate sites which may charge for meals served to children who are not served meals under the Summer Food Service Program;
- Issue a free meal policy statement in accordance with 225.6(c);
- Meet the training requirement for its administrative and site personnel as required under 225.15(d)(1);



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

- Submit original claims for reimbursement within 60 calendar days of the end of the claiming month, or if a sponsor operates 10 days or fewer in the final month of operations, shall submit a combined claim for the final month and the immediate preceding month within 60 calendar days of the last day of operation, as established by the State agency and stated in 225.9;
- Claim reimbursement only for a type or types of meals specified in the agreement and served without charge to the children at approved sites during the approved meal service period, except that camps and non-congregate sites shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who meet the Summer Food Service Program's income standards. The agreement shall specify the approved levels of meal service for the sponsor's site if such levels are required under 225.6(h)(2). No permanent changes may be made in the serving time of any meal unless the changes are approved by the State agency;
- In storage, preparation, and service of food, maintains proper sanitation and health standards in conformance with all applicable State and local laws and regulations;
- Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Food Distribution Program;
- Have access to facilities necessary for storing, preparing and service of food;
- Maintain a financial management system prescribed by the State agency;
- Maintain on file documentation of site visits and reviews in accordance with 225.15(d)(2) and (3);
- Upon request, make all accounts and records pertaining to the Summer Food Service Program available to the State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;
- For approved congregate meal service, maintain children on site while meals are consumed. Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption if the requirements in [§ 225.16\(h\)](#) are met.
- Retain final financial and administrative responsibility for its Summer Food Service Program.
- Adhere to the State Agency's Policy Statement for Meals Served:

The Sponsor assures the State Agency that the policy herein stated will be uniformly applied and implemented for all participating child nutrition sites under its jurisdiction and that all children are served the same meals at no separate charge regardless of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability and that there is no discrimination in the meal service program. The sponsor agrees that no meals will be claimed unless there is adequate documentation on file to support the claim.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

The sponsor also agrees to establish a procedure to account for meals served.

The Sponsor further assures the State Agency the sponsor's jurisdiction which are using individual enrollment to document areas in which poor economic conditions exist and by camps, conditional non-congregate or closed-enrolled sites using Income Eligibility Forms to document children's eligibility, the standard of determining eligibility for participation in the SFSP shall be in conformity with the State Agency's household size and Income eligibility standards for free and reduced priced school meals or that case numbers are used for children from Supplemental Nutrition Assistance Program (SNAP) or for a child participating in the Food Distribution Program on Indian Reservations (FDPIR). Unless an alternate method is approved by the State Agency, the sponsor agrees to use the SFSP Income Eligibility Form supplied by the State Agency to obtain household size and income information or a master case number for SNAP or FDPIR from the households of children enrolled in SFSP. Children whose families receive SNAP, FDPIR, or TANF benefits are automatically eligible for free meals. Camps and conditional non-congregate sites charging separately for meals will collect payments from children who must pay the full price for their meals in a manner that will not overtly identify children receiving free meals and the sponsor assures that there is a hearing procedure for families who want to appeal a denial of eligibility for free meals and if a family requests a hearing, the child will continue to receive free meals until a decision is made by the hearing official.

**E. Healthy School Meals for All Program Requirements:**

Sponsors electing to participate in the Healthy School Meals for All State Program (HB 22-1414) shall agree to:

- Provide annual notice of participation to the State Agency during the annual application process;
- Provide meals free of charge to all students in participating schools;
- Maximize Federal meal reimbursements, including participation in the Community Eligibility Provision at qualifying schools.

**IX. Criminal Provisions and Penalties**

As established in Section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)):

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a

grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such assets, or property for personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

**X. Withholding Payments**

In accordance with Departmental regulations at 2 CFR 200.338 through 200.342, the State Agency shall withhold Program payments, in whole or in part, to any sponsor which has failed to comply with the provisions of this part. Program payments shall be withheld until the sponsor takes corrective action satisfactory to the State Agency or gives evidence that such corrective action will be taken, or until the State Agency terminates the grant in accordance with §210.25 of this part.

Subsequent to the State Agency's acceptance of the corrective actions, payments will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

**XI. Fines**

In accordance with regulations at 7 CFR 210.26(b)(3), 215.15(b)(3), 220.18(b)(3), 225.18(k)(3), 226.25(j)(3), and 235.11(c)(2), and 210.18(p), SFAs who operate any child nutrition program may be subject to fines under exceptional circumstances, which may include failure to correct severe program mismanagement; disregard of a program requirement if which it has been informed; or failure to correct repeated violations of program requirements.

**XII. Termination Procedures**

Whenever it is determined that a Sponsor has materially failed to comply with the provisions of this agreement, or with State Agency guidelines and instructions, the State Agency may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A Sponsor may also terminate the Program by mutual agreement with State Agency. The State Agency and the Sponsor shall comply with the provisions of 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415 concerning grant suspension, termination and closeout procedures. In accordance with 7 CFR part 225.6(i), the State agency or Summer Food Service Program sponsors may terminate the agreement at its convenience, upon mutual agreement, due to considerations unrelated to either party's performance of Program responsibilities under the agreement.

The State Agency may terminate this agreement immediately after receipt of evidence that the terms and conditions of the agreement and of the regulations governing the program have not been fully complied with by the Sponsor or found to be seriously deficient as outlined in State Agency's Serious Deficiency Policy and in accordance with 225.11(c). Any termination or expiration of this agreement, however, shall not affect the obligation of the Sponsor to maintain and retain records and to make such records available for audit.

**XIII. Assurance of Civil Rights Compliance**

The State agency hereby agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000)
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.)
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3)
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that 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, religion, sex, gender identity (including gender expression) sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the State agency.



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
Denver, CO 80203

**XIV. Signatures:**

<b>Signature of Authorized Representative</b> (Superintendent, Business Official, or other organization staff authorized to enter into this permanent agreement)	<b>Title of Authorized Representative:</b>  Executive Director	Date (Month/Day/Year)
<b>Signature of Sponsor Contact</b> (Child Nutrition Director or responsible individual for functions related to overseeing CNPs)	<b>Title of Sponsor Contact:</b>  Director of Health Initiatives	Date (Month/Day/Year)



**COLORADO**  
Department of Education

Office of School Nutrition 1525  
Sherman Street Suite 309  
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In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or
2. **fax:**  
(833) 256-1665 or (202) 690-7442; or
3. **email:**  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.

**Contract Control Number:** MOEAI-202473710-00  
**Contractor Name:** State of Colorado, Department of Education

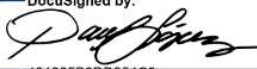
IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: 5/28/2024 | 12:37 PM MDT

**SEAL**



**CITY AND COUNTY OF DENVER:**

**ATTEST:**

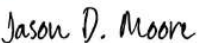
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Clerk and Recorder/Public Trustee  
The Honorable Paul D. Lopez

By: DocuSigned by:  
  
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Mayor  
Michael Johnston

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

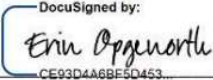
Attorney for the City and County of Denver

By: DocuSigned by:  
  
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Assistant City Attorney  
Jason D. Moore

By: DocuSigned by:  
  
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Chief Financial Officer  
Nicole Doheny

By: DocuSigned by:  
  
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Auditor  
Timothy O'Brien

**Contract Control Number:** MOEAI-202473710-00  
**Contractor Name:** State of Colorado, Department of Education

By:  \_\_\_\_\_  
DocuSigned by:  
Erin Opgenorth  
CE93D4A68F5D453...

Name: Erin Opgenorth  
(please print)

Title: Child Nutrition Programs Manager  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)