

NUTRITION SERVICES AGREEMENT

STATE OF TEXAS § **BETWEEN THE SAN ANTONIO EARLY**
 § **CHILDHOOD EDUCATION MUNICIPAL**
 § **DEVELOPMENT CORPORATION AND SAN**
COUNTY OF BEXAR § **ANTONIO FOOD BANK**

This Agreement (also referred to as “Contract”) is entered into by and between San Antonio Early Childhood Education Municipal Development Corporation, a Texas Municipal Development Corporation (hereinafter referred to as the "Corporation"), and the San Antonio Food Bank (hereinafter referred to as "Vendor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I.
DEFINITIONS

CACFP – The Child and Adult Care Food Program is a type of United States federal assistance provided by the United States Department of Agriculture to states in order to provide a daily subsidized food service for an estimated 3.3 million children.

CEO – Chief Executive Officer (CEO) is the position of the most senior corporate officer, executive, leader or administrator in charge of managing an organization.

The Corporation – Refers to the San Antonio Early Childhood Education Municipal Development Corporation, also known as Pre-K 4 SA.

Extended Day – Pre-K 4 SA after school program from 3:00 PM to 6:00 PM.

Education Centers – Are the four locations of Pre-K 4 SA Campuses where meals are delivered.

Family Style – All foods needed to meet the meal pattern requirements are placed in serving plates or bowls on a table and children serve themselves with some help from site staff.

Garden to Market – Farmers market events that promote healthy nutritional options for students to purchase and take home.

NAEYC – The National Association for the Education of Young Children is a large nonprofit association in the United States representing early childhood education teachers, para-educators, center directors, trainers, college educators, families of young children, policy makers, and advocates.

Portion – Referring to the CACFP Family Style serving regulations for portion sizes to meet four year old requirements.

Student – Pre-K 4 SA students attending the program.

Vendor – Refers to the company supplying the nutritional services to the Corporation.

II. **TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 1, 2018 and terminate on June 30, 2021.

2.2 Corporation shall have the option to renew for two (2) additional one-year terms. Each option to renew shall be exercised at least six (6) months prior to the expiration of the current term in writing to Vendor. If Corporation fails to timely renew, Vendor may allow Corporation to renew at Vendor's sole discretion.

2.3 Vendor agrees and understands that the Corporation expects to pay all obligations of this Agreement from a 1/8th cent sales tax approved by the voters of the City of San Antonio. Accordingly, if funding is not received by Corporation in a sufficient amount to pay any of its obligations under the terms of this Agreement, or if the collection of sales tax is terminated, then this Agreement will terminate and neither Corporation nor Vendor will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement; provided however, that lack of funding will not excuse payment for services rendered. Any accrued Vendor expenses shall remain due and payable by Corporation.

III. **SCOPE of SERVICES**

3.1 Vendor agrees to provide the goods, products, materials, and equipment (" Goods") and services described in this Article III (Scope of Services), in exchange for the compensation described in Article IV (Compensation and Other Fees).

3.2 Meal Requirements and Meal Services.

3.2.1 Vendor will provide breakfast, lunch, snack and a late afternoon snack for students attending the Pre-K 4 SA Education Centers under the Texas Department of Agriculture's Child and Adult Care Food Program (CACFP).

3.2.2 Meals will be provided in Family Style form and will be prepared off site. Any required food components delivered in bulk form must be approved by the Center Director and shall be accompanied by written instructions regarding the planned portion size to be served of each food component needed to meet the appropriate meal pattern requirements.

3.2.3 All meals provided by Vendor shall comply with the meal pattern requirement of the appropriate CACFP meal planning system, in accordance with the CACFP Policy Statement, attached hereto and incorporated by reference as Attachment I.

3.2.4 Milk will be included with each breakfast and lunch to include non-fat or 1% at a quantity selected by Corporation.

3.2.5 Vendor will provide meals which accommodate the special dietary needs and food allergies of children as identified. The Corporation shall make formal requests on a case-by-case basis supported by a medical statement.

3.2.6 Vendor will provide vegetarian Breakfast, and Lunch to the schools each day as specified by the Corporation.

3.2.7 Vendor will provide the Corporation with sack lunches which meet the CACFP meal requirements for field trips when requested. The cost per lunch will remain the same as for the regular lunches, and lunches will be delivered the day of consumption.

3.2.8 No payment shall be made for meals that are spoiled or unwholesome at the time of service, do not meet the specifications developed by the Corporation and/or CACFP regulations, or do not otherwise meet the requirements of the agreement; however, no deduction shall be made unless Corporation gives Vendor written notification of the meal service for which the deduction is to be made, specifying the number of meals for which the Corporation intends to deduct payment and setting forth the reasons for the deduction. Corporation shall provide such notice no later than three (3) days after the date the meal was served. Vendor shall prepare and store at proper temperatures a sample meal for each meal served at the centers for the previous three days, to serve as documentation of the wholesome criteria. However, Corporation acknowledges that the sample meals shall not be used for documentation regarding spoilage. If Corporation discovers an issue of a meal being spoiled, Corporation shall immediately save the particular meal and call Vendor to inspect and respond to the issue on the same day such spoilage is discovered. The facts and resolution of the spoilage issue shall be documented in writing by the Parties.

3.2.9 The Corporation will retain responsibility for the oversight, record keeping and management of the CACFP and the school food service operation, including processing the Corporation's free and reduced-price meal applications and submitting claims for reimbursement to the Texas Department of Agriculture. The Corporation is responsible for any reimbursement over-claims resulting from improperly categorized applications and/or meal counting errors.

3.2.10 The Corporation will be responsible for providing the employees necessary to accept delivery, serve, and supervise consumption of meals during breakfast, lunch, and snack service.

3.2.11 Clean-up of the kitchen before and after the meal service will be the responsibility of the employees of the Corporation.

3.2.12 Vendor shall provide a full-time Program Manager devoted to the contract to serve as the designated point of contact to the Corporation, to be accessible one (1) hour before the first service (breakfast) and one (1) hours after the last service (late snack) to address any problems that may arise (i.e., meals not meeting requirements, food not prepared to specifications, insufficient number of servings/meals, so that missing components/meals shorted may be delivered before serving time).

3.2.13 Vendor will develop the menus for each meal. All menus developed by Vendor must receive prior approval from the Corporation before preparation/delivery. During the first four weeks of the agreement, Vendor must provide meals in accordance with a four-week cycle breakfast, lunch, and snack menu approved by the Corporation; thereafter, menus may be changed only with the approval of the Corporation. Vendor must provide a monthly menu covering the lunches, breakfasts, and snacks to be served for the following month no later than ten (10) days prior to the following month's first meal delivery. Vendor agrees to manage the daily meal selections to maximize student satisfaction and participation as communicated to Vendor by Corporation. In the event that a substitution is required, Vendor will communicate the need in writing and provide revised documentation including production records that include the

substituted item and demonstrate compliance.

3.2.14 Vendor is responsible for obtaining the nutrient analysis of menus prior to meal services to ensure meals meet nutrient requirements, in accordance with CACFP policies including for any substituted item.

3.2.15 Vendor understands and agrees that it will not engage subcontractors to perform any services on-site at the Corporation facilities without the prior written approval of the Corporation.

3.2.16 The Corporation will not make United States Department of Agriculture donated foods or commodities available for use by Vendor. The Corporation will not make processed commodities available for use by Vendor.

3.3 Ordering and Delivery of Meals.

3.3.1 The breakfast, lunch, and snacks meal service will be delivered by Vendor to the Corporation sites. Vendor will be responsible for transporting meals from the preparation site to the school sites. The delivery times to the Corporation will be 6:30 AM for breakfast and 9:30 AM for lunch and the two snacks, but may be revised by mutual agreement of the parties evidenced by e-mail or other written communication through their designated representatives without formal written amendment of this Agreement.

3.3.2 Vendor and Corporation agree to manage menu forecasting and waste such that the Corporation shall pay only for meals that are ordered. The number of meals by category delivered each day shall not be less than a negotiated minimum. The Parties agree and understand that they will cooperate in the forecasting and establishment of minimums through regular communication between their designated points of contact or other designated staff.

3.3.3 Corporation shall contact Vendor at an agreed upon time each week to provide the number of meals ordered for delivery to each center the following week. The Corporation shall be responsible for the cost of all meals ordered.

3.3.4 The Corporation must provide Vendor with 48-hours' notice of any increase or decrease in the number of meals ordered. Should Corporation fail to give Vendor 48-hours' notice of increases and decreases, Corporation shall be responsible for the total meals ordered.

3.3.5 The Corporation and Vendor will agree upon a system for communicating meal changes and menu selections for the four-week menu cycle.

3.3.6 Corporation shall be responsible for providing twenty-five (25) warming cabinets for use at the Centers, and Vendor will be responsible for cleaning transport containers after the meal service.

3.3.7 Vendor is responsible for providing the agreed-upon meal service(s) each day the Corporation is in session.

3.3.8 A designee of the Corporation must sign the delivery packing slips. The Corporation shall communicate who the designee(s) at each center will be prior to the beginning of the academic year and any changes regarding the designee shall be given to Vendor in writing 24 hours prior to such change.

3.3.9 Any changes or substitutions to approved menus must receive prior approval from the Corporation, by the Food Services Manager or his/her designee.

3.3.10 Centers must be notified by phone as soon as possible if meals may be delivered late by 15 minutes or more for any reason. Meals will be considered late if delivered to a school more than 15 minutes past the scheduled arrival time. Liquidated damages for late or undelivered meals may be assessed in the following manner:

3.3.11 Liquidated Damages – Late Delivery of Meals. For each occurrence, after the first 30 days of this Agreement, of a delivery arriving at a center more than 15 minutes after its scheduled arrival time, Vendor may be assessed liquidated damages in the amount of \$500.

3.3.12 Liquidated Damages – Undelivered Meals. For each occurrence of undelivered meals at any location, Vendor may be assessed liquidated damages in the amount of \$7,000 in the Contract year 1, and increasing in the later years as follows.

- a. Contract Year 2 - Academic year 2019-2020: \$15,000
- b. Contract Year 3 - Academic year 2020-2021: \$17,000
- c. Contract Year 4 - Academic year 2021-2022: \$20,000
- d. Contract Year 5 - Academic year 2022-2023: \$23,000

3.3.13 Meals will be considered undelivered if they are not at each location at the service times for breakfast, lunch or snack.

3.3.14 For a partial delivery liquidated damages would be established as a percentage of the costs above equal to the percentage shortage or meals not delivered prior to service times for breakfast, lunch or snack.

3.3.15 Liquidated damages will not be assessed if lateness or undelivered meals results from "Force Majeure." The term "Force Majeure" as used herein means acts of god; acts of public enemy, blockages, wars, insurrections or riots; landslides, earthquakes, fires, storms, floods, or washouts; governmental restraints, either federal or state, civil or military; civil disturbances; explosions; traffic accidents caused entirely by a party other than vendor or vendor's employees; road closures; and construction delays.

3.4 Health and Sanitation.

3.4.1 The Corporation and Vendor agree that federal, state and local health, safety and sanitation requirements will be met at all times.

3.4.2 Vendor will prepare meals at a site that maintains the appropriate state and local health certifications for the facility. Vendor will provide copies upon request by the Corporation.

3.4.3 A hazard analysis and critical control points (HACCP) Food Safety Plan must be implemented and documentation provided to the Corporation from Vendor.

3.4.4 Vendor and its employees shall adhere to the Reporting/Regulatory Compliance in Attachment II as necessary to document meal delivery wholesomeness and that the meals are free of spoilage.

3.4.5 All food will be properly stored, prepared, packaged, and transported at

appropriate temperatures and free of contamination, in accordance with State and local health and sanitation requirements and in compliance of CACFP standards.

3.4.6 Food handlers must be certified according to state and/or local health and sanitation requirements.

3.4.7 Vendor shall permit inspection of Vendor's facilities at any time during the agreement period by representatives from the Corporation upon reasonable notice to Vendor.

3.5 Equipment and Utensils.

3.5.1 The Corporation shall furnish and be responsible for repairs and maintenance for the following equipment: the milk coolers, refrigerators, and twenty-five warming cabinets, which are on the Corporation's premises and which are owned by the Corporation.

3.5.2 Vendor shall purchase and furnish the following equipment: eight (8) warming cabinets, twenty (20) Catermax units, twenty (20) carts, and seventy-two (72) ice chests. All other equipment provided by Vendor shall remain the property of Vendor and Vendor shall be responsible for maintaining equipment in proper working order.

3.5.3 Vendor shall furnish and be responsible for the necessary utensils, napkins, paper supplies and condiments in sufficient quantity for the number of meals provided. Vendor shall also provide the meals packaged in serving trays for breakfasts and lunches, and, if necessary, paper containers for required vegetable component servings.

3.6 Records and Recordkeeping.

3.6.1 Vendor will maintain all necessary records on the nutritional components and quantities of the meals delivered to the Corporation and make said records available for inspection by federal, state and local authorities and by the Corporation upon five days advance notice of the time and date for such inspection unless federal, state and/or local authorities require inspection and do not give the Corporation five days advance notice; however, Corporation will give Vendor the same amount of notice that Corporation receives.

3.6.2 Vendor, under Corporation supervision and approval, provides menus and production records for meals prepared, nutrient information, documentation on processed products (child nutrition labels or product formulary) and recipes in accordance with the Texas Department of Agriculture CACFP Policy and Handbook. Vendor must provide access to these records at Vendor's production kitchen upon reasonable advance notice for audit by the appropriate federal, state and local government agency. Documentation is subject to approval by the Corporation.

3.6.3 No later than seven days prior to the following month's first meal delivery, Vendor shall provide documentation to the Corporation which shall include, but not be limited to, the breakfast, lunch and snacks menu for each Center for the upcoming month; allergen reports; carbohydrate reports for breakfast, lunch, and vegetables; hot/cold breakfast meal pattern, lunch meal pattern, snack meal pattern when applicable and any information required so that the Corporation can complete and comply with CACFP reimbursement guidelines. The Corporation will notify the Vendor of any documentation that is needed at least two weeks prior to due date. Vendor will provide recipes and sub recipes for the four- week cycle menu for all breakfasts, lunches, and snacks in the standardized USDA format; child nutrition labels for all products; and nutrition fact labels and ingredients for all products.

3.6.4 With each meal delivery, Vendor shall provide a delivery packing slip and the production record for receiving kitchens for breakfast, lunch, snacks if applicable. Vendor must provide a written description on each delivery packing slip and site production record regarding the meals prepared, including the amount prepared, the contribution toward each component, recommended serving portion and the number of meals prepared. The site production record shall follow USDA requirements.

3.6.5 Corporation shall prepare and submit the monthly claim for reimbursement. The Corporation shall prepare and maintain participant applications and eligibility records, attendance reports and meal counts in accordance with program requirements. The Corporation shall maintain the program meal records based upon the documentation provided daily on the written delivery packing slips and site production records accompanying the meals provided by Vendor. The written delivery packing slips and site production records are completed by the employees provided by Vendor.

3.6.6 Vendor must provide to Corporation document requisition support in the event of an audit or review by the Texas Department of Agriculture. Corporation shall be responsible for notifying Vendor within three (3) days of receiving notice of an audit. Corporation shall be responsible for providing written notification from the governing entity so that Vendor is positioned to best support the requisition request and tailor the support to what is required. Document requisition in an audit or review shall include, but not be limited to, the following: support with menus; production records; nutrient analyses; standardized recipes; child nutrition labels and product formulation statements; nutrition fact labels and ingredients for all products; whole grain statements and labels; product analysis sheets for grains and meat/meat alternate (MMA).

3.6.7 In accordance with Texas law, Vendor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Vendor agrees that no such local government records produced by or on the behalf of Vendor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Vendor.

3.6.8 Vendor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of Corporation and shall be made available to the Corporation at any time. Vendor further agrees to turn over to Corporation all such records upon termination of this Contract. Vendor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the CEO, unless required to do so by a court of competent jurisdiction. Vendor agrees that the Corporation shall be notified of such request(s) as set forth in this Contract. Corporation and Vendor agree that the books and records pertaining to the program under the CACFP will be made available upon request to representatives of the Texas State Health Services, Texas Department of Agriculture, Food and Nutrition Service - United States Department of Agriculture, and the United States General Accounting Office at any reasonable time and place.

3.7 Nutrition Education.

3.7.1 Vendor shall provide professional development to staff regarding healthy nutrition for children for licensing purposes and will provide a Nutrition Education Plan for students and

parents consistent with those activities and events such as, but not limited to, Produce Markets, Gardening, Pre-K Family nutrition classes, Corporation Staff lessons on Family Style serving and Nutritional Education lessons to Pre-K Staff to teach the students. However, Vendor and Corporation shall mutually agree on the type and frequency of such events.

3.7.2 Corporation and Vendor may agree to include other activities or events not included above as agreed upon by the parties and established by written amendment to this Agreement.

**IV.
COMPENSATION AND OTHER FEES**

4.1 The payment from Corporation for meals provided by Vendor shall be based upon the total cost per reimbursable meal. Corporation acknowledges that the costs contained herein are based on full enrollment of each location and Vendor reserves the right to adjust the price per meal if a location is operating at less than 95% of full enrollment upon 30 days' written notice to Corporation.

4.2 The Corporation agrees to pay the individual serving amount in the table below:

Meal	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Breakfast	\$1.86	\$1.95	\$2.01	\$2.10	\$2.18
Lunch	\$3.26	\$3.70	\$3.75	\$3.85	\$3.94
Snack 1	\$0.88	\$0.93	\$0.96	\$1.00	\$1.05
Late Snack	\$0.88	\$0.93	\$0.96	\$1.00	\$1.05

Adult breakfasts and lunches will be provided upon request at the same prices negotiated for child meals; however, Corporation acknowledges that the portion sizes shall remain the same as those provided for child meals. If Corporation requires a larger "adult" portion, Corporation shall inform Vendor when the adult meal is ordered and Vendor shall invoice Corporation the negotiated meal price plus an additional 40%. Payment for adult breakfast and lunches shall be based on upon the total cost of the meals ordered and delivered. Vendor will provide the Corporation with sack lunches which meet the CACFP meal requirements for field trips when requested. The cost per lunch will remain the same as for the regular lunches, and lunches will be delivered the day of consumption. The meal pricing table above is with the delivery cost built in from the proposal of the Vendor.

4.3 Corporation agrees to pay Vendor for meals ordered and delivered, in accordance with pricing set out in Section 4.2 above, with maximum amounts allocated per Contract year as set out below:

4.3.1 Annual Amounts NOT TO EXCEED:

- a. Contract Year 1 - Academic Year 2018-2019: \$2,395,314
- b. Contract Year 2 - Academic Year 2019-2020: \$2,491,806
- c. Contract Year 3 - Academic Year 2020-2021: \$2,547,780
- d. Contract Year 4 - Academic Year 2021-2022: \$2,636,335
- e. Contract Year 5 - Academic Year 2022-2023: \$2,723,265

4.3.2 A cumulative Total Amount for the Contract NOT TO EXCEED: \$12,794,500

4.4 Vendor shall present a monthly itemized invoice to Corporation for payment within seven (7) days of the end of each month in which meals were served. Invoices will be paid by Corporation within thirty (30) days of receipt of the invoice. No Education Center food service account funds shall be used for payment of interest or late fees. Interest or late fees charged to Corporation for late payment of invoices cannot exceed one percent of the balances of the invoice due, per month. The format of invoices shall be approved by Corporation.

4.5 No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by Corporation. The parties hereby agree that all compensable expenses of Vendor have been provided for in the total payment to Vendor as specified in this Article IV. Total payments to Vendor cannot exceed those amounts set forth in section 4.3 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Board for the Corporation.

4.6 Additional services may be added to this Contract by written agreement of the parties.

4.7 Final acceptance of services requires written approval by Corporation. The approving official shall be the CEO, or her designee. Payment will be made to Vendor following written approval of the services by the CEO. Corporation shall not be obligated or liable under this Contract to any party, other than Vendor, for the payment of any monies or the provision of any goods or services.

V.

TERMINATION

5.1 For purposes of this Agreement "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

5.2 Termination without Cause. This Agreement may be terminated by Corporation upon one hundred eighty (180) calendar day's written notice, which notice shall be provided in accordance with the provisions of this Contract.

5.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with the provisions of this Contract, Corporation may terminate this Agreement as of the date provided in the notice, or in accordance with this Article for defaults with an opportunity to cure, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

- 5.3.1 Failure of Vendor to meet the health and sanitation requirements of the State and/or local health department.
- 5.3.2 Failure of Vendor to adhere to the recordkeeping and documentation requirements as described in Sections VII and VIII if such failure is not remedied as provided in Section 10.4.
- 5.3.3 Lack of sufficient funds for the operation of the program.
- 5.3.4 Failure of Vendor to serve meals in accordance with the delivery schedule outlined in Attachments I and II if such failure is not remedied as provided in Section 10.4.

- 5.3.5 Failure of Vendor to serve meals in accordance with the health requirements and specifications outlined in Attachment I if such failure is not remedied as provided in Section 10.4.
- 5.3.6 Failure of Vendor to serve a sufficient quantity of meals as agreed upon by Corporation and Vendor if such failure is not remedied as provided in Section 10.4.
- 5.3.7 Bankruptcy or selling substantially all of company's assets.
- 5.3.8 Failing to perform or failing to comply with any covenant herein required if such failure is not remedied as provided in Section 10.4.
- 5.3.9 Performing unsatisfactorily if such failure is not remedied as provided in Section 10.4.

5.4 Defaults with Opportunity for Cure. In the event either Party commits material breach of this Agreement, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have thirty (30) days within which to cure the default. If the default is not cured within that time, the non-breaching party shall have the right to terminate this Agreement in whole or in part as the non-breaching party deems appropriate, without further notice to the breaching party, and, in the event Vendor is the breaching party, Corporation shall have the right to contract with another vendor to complete the work, or provide the goods or products, required in this Agreement. Corporation shall also have the right to offset the cost of said new Agreement with a new vendor against Vendor's future or unpaid invoice(s), subject to the duty on the part of Corporation to mitigate its losses to the extent required by law. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this Agreement. In the event Corporation is the breaching party, Corporation shall remain liable for all outstanding invoices and accrued Vendor expenses.

5.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

5.6 Regardless of how this Agreement is terminated, Vendor shall make available and retain, at no additional cost to Corporation, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Vendor, or provided to Vendor, hereunder, regardless of storage medium in accordance with this Contract. Any record transfer requested by Corporation to comply with audits as outlined in this Contract shall be completed within thirty (30) calendar days of a written request by Corporation and shall be completed at Vendor's sole cost and expense. Payment of compensation due or to become due to Vendor is conditioned upon delivery of all such documents, if requested.

5.7 Within ninety (90) calendar days of the effective date of completion, or termination or expiration of this Agreement, Vendor shall submit to Corporation its claims, in detail, for the monies owed by Corporation for services performed under this Agreement through the effective date of termination. Failure by Vendor to submit its claims within said ninety (90) calendar days shall negate any liability on the part of Corporation and constitute a **Waiver** by Vendor of any and all right or claims to collect moneys that Vendor may rightfully be otherwise entitled to for services

performed pursuant to this Agreement.

5.8 Upon the effective date of expiration or termination of this Agreement, Vendor shall cease all operations of work being performed by Vendor or any of its subcontractors pursuant to this Agreement.

5.9 Termination not sole remedy. In no event shall Corporation's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of Corporation's remedies, nor shall such termination limit, in any way, at law or at equity, Corporation's right to seek damages from or otherwise pursue Vendor for any default hereunder or other action.

VI. **NOTICE**

6.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or upon receipt by facsimile at the numbers set forth, or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for Corporation, to:

Sarah Baray, CEO
Pre-K4 SA
P.O. Box 839966
San Antonio, Texas
78283-3966
210-207-4122 (fax)

If intended for Vendor, to:

Eric Cooper, President
San Antonio Food Bank
5200 Enrique M. Barrera Parkway
San Antonio, TX 78227
210-431-8472

VII. **REQUESTS FOR AND RETENTION OF RECORDS**

7.1 Vendor shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to this agreement (hereafter referred to as "documents"), and shall make such materials available to the Corporation at their respective offices, at all reasonable times and as often as Corporation may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by Corporation and any of

its authorized representatives.

7.2 Corporation and Vendor shall retain any and all documents produced as a result of this Agreement hereunder for a period of five (5) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Vendor shall retain the records until the resolution of such litigation or other such questions. Vendor acknowledges and agrees that Corporation shall have access to any and all such documents at any and all times, as deemed necessary by Corporation, during said retention period. Corporation may, at its election, require Vendor to return said documents to Corporation prior to or at the conclusion of said retention.

7.3 The Public Information Act, Government Code Section 552.021, requires the Corporation to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Vendor receives inquiries regarding documents within its possession pursuant to this Contract, Vendor shall within twenty-four hours of receiving the requests forward such requests to Corporation for disposition. If the requested information is confidential pursuant to state or federal law, Vendor shall submit to Corporation the list of specific statutory authority mandating confidentiality no later than three (3) business days of Vendor's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party. The parties agree that for the term of this Agreement public information shall have that meaning as set out in Government Code Section 552.002(a), as amended.

VIII. AUDIT

8.1 The Corporation reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by Corporation, not to exceed two times per 12 month period. The Corporation may engage a Certified Public Accounting (CPA) firm, or other personnel as designated by the Corporation, to perform such audit(s) or reviews. The Corporation reserves the right to determine the scope of every audit. In accordance herewith, Vendor agrees to make available to Corporation all accounting and Project records. Vendor acknowledges that this provision shall not limit the Corporation from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the Corporation's attention which are other than routine.

8.2 Vendor shall during normal business hours, upon 10 days' advance written notice to Vendor of the audit start date unless federal, state and/or local authorities require audit and do not give the Corporation ten days advance notice and in which case Corporation will give Vendor the same notice Corporation receives and not to exceed two times per twelve month period by Corporation and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of five (5) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit

report covering such agreement has not been accepted, then Vendor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Vendor in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

IX.

ADMINISTRATION OF AGREEMENT and RESTRICTIONS ON USE OF FUNDS

9.1 Vendor shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, Vendor shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the five (5) year period, Vendor agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

9.2 Unless disclosure is authorized by the Corporation, Vendor agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from Corporation including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Vendor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Vendor shall give the Corporation prior written notice that such disclosure is required with a full and complete description regarding such requirement. Vendor shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Vendor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the Corporation's or authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, Vendor shall return to Corporation all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and Vendors are aware of and shall comply with the aforementioned obligations.

9.3 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law, Vendor agrees to comply with the following special provisions:

9.3.1 Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the Corporation and/or the City or any other public entity; and

9.3.2 Vendor, at the Corporation's option, could be ineligible for consideration to

receive any future funding while any adversarial proceeding against the either the Corporation or City remains unresolved.

X.
INSURANCE

10.1 A) Prior to the commencement of any work under this Agreement, VENDOR shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY and CORPORATION, which shall be clearly labeled “Nutrition Services for Pre-K 4 SA” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to CITY and CORPORATION. Neither CITY nor CORPORATION shall have any duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY and CORPORATION. No officer or employee, other than CITY’S Risk Manager or the CORPORATION’S designated staff person, shall have authority to waive this requirement.

B) The CITY and CORPORATION each reserve the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY’S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY and CORPORATION allow modification whereupon CITY and CORPORATION may incur increased risk.

C) VENDOR’S financial integrity is of interest to CITY and CORPORATION; therefore, subject to VENDOR’S right to maintain reasonable deductibles in such amounts as are approved by CITY and CORPORATION, VENDOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at VENDOR’S sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Child Molestation/Sexual Abuse Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
*If Applicable	

D) VENDOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of VENDOR herein, and provide a certificate of insurance and endorsement that names VENDOR, CITY and CORPORATION as additional insureds. Respondent shall provide CITY and CORPORATION with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY’S Risk Manager, without subsequent City Council approval, or by the CORPORATION’S designated staff without further Board approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CITY’S Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by CITY and CORPORATION, CITY and CORPORATION shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). VENDOR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the CORPORATION at the address provided below within ten (10) days of the requested change. VENDOR shall pay any costs incurred resulting from said changes.

Pre-K 4 SA
Attn: Sarah Baray
P.O. Box 839966
San Antonio, Texas 78283-3966

F) VENDOR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, CORPORATION their officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY or CORPORATION, with the exception of the workers’ compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio or CORPORATION where either CITY and/or CORPORATION is an additional insured shown on the policy;
- Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY and CORPORATION.
- Provide advance written notice directly to CITY and CORPORATION of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, VENDOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY and CORPORATION. CITY and CORPORATION shall have the option to suspend VENDOR’s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) CORPORATION shall have the right to order VENDOR to stop work hereunder, and/or withhold any payment(s) which become due to VENDOR hereunder until VENDOR demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which VENDOR may be held responsible for payments of damages to persons or property resulting from VENDOR’s or its subcontractors’ performance of the work covered under this Agreement.

J) It is agreed that VENDOR’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by either the City of San Antonio or the Corporation for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of CITY or CORPORATION shall be limited to insurance coverage provided..

L) VENDOR and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. **INDEMNIFICATION**

11.1 VENDOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY, THE CORPORATION, AND THEIR ELECTED OFFICIALS, APPOINTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY AND CORPORATION, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR CORPORATION DIRECTLY OR INDIRECTLY ARISING

OUT OF, RESULTING FROM OR RELATED TO VENDOR'S NEGLIGENT PERFORMANCE OF ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF VENDOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF VENDOR, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY OR CORPORATION, THEIR OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT VENDOR, CITY AND CORPORATION ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY OR CORPORATION UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY and CORPORATION in writing within 24 hours of any claim or demand against the CITY, CORPORATION or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY and CORPORATION shall each have the right, at their option and at their own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

11.2 Defense Counsel - VENDOR shall retain defense counsel within ten (10) business days of CORPORATION's and/or CITY's written notice that CORPORATION or CITY is invoking its right to indemnification under this Contract. If VENDOR fails to retain Counsel within such time period, CORPORATION and/or CITY shall have the right to retain defense counsel on its own behalf, and VENDOR shall reimburse CORPORATION and/or CITY for all costs related to retaining defense counsel until such time as VENDOR retains Counsel as required by this section. CORPORATION and CITY shall also have the right, at their option, to be represented by advisory counsel of their own selection and at their own expense, without waiving the foregoing. If CORPORATION and/or CITY invokes the indemnification provisions herein and the claims brought upon the CORPORATION and/or the CITY are not directly related to VENDOR'S negligent performance of services hereunder, CORPORATION shall reimburse VENDOR for the costs VENDOR incurred to retain defense counsel.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of VENDOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for VENDOR or any subcontractor under worker's compensation or other employee benefit acts.

11.4 VENDOR further agrees that it will indemnify and hold the CORPORATION harmless from any claim involving patent infringement or copyright on any goods or products supplied.

XII.

ASSIGNMENT AND SUBCONTRACTING

12.1 Vendor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Vendor. Vendor, its employees or its subcontractors shall perform all necessary work.

12.2 It is the Corporation's understanding that this Agreement is made in reliance thereon that Vendor does not intend to use subcontractors in the performance of this Agreement, but in the event that subcontractors become necessary, Vendor agrees that any subcontractor(s) shall be approved by Corporation prior to the provision of any services by said subcontractor(s).

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the Corporation, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Vendor. Corporation shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Corporation.

12.4 Except as otherwise stated herein, Vendor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Corporation. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Vendor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, Corporation may, at its option, cancel this Agreement and all rights, titles and interest of Vendor shall thereupon cease and terminate, in accordance with this Agreement, notwithstanding any other remedy available to Corporation under this Agreement. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this Agreement, nor shall it relieve or release Vendor from the payment of any damages to Corporation, which Corporation sustains as a result of such violation.

XIII.

INDEPENDENT CONTRACTOR

13.1 VENDOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of the CORPORATION; that VENDOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of *respondeat superior* shall not apply as between CORPORATION and VENDOR, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between CORPORATION and VENDOR. The parties hereto understand and agree that the CORPORATION shall not be liable for any claims which may be asserted by any third party

occurring in connection with the services to be performed by VENDOR under this Agreement and that VENDOR has no authority to bind the CORPORATION.

XIV.
CONFLICT OF INTEREST

14.1 VENDOR acknowledges that it is informed that the Board for the CORPORATION has adopted the Ethics Code for the City of San Antonio, which prohibits a CITY or CORPORATION officer or employee, from having a financial interest in any contract with the CORPORATION or CITY, or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the CORPORATION or CITY or in the sale to the CORPORATION or CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CORPORATION or CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CORPORATION or CITY contract, a collaborator or a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, VENDOR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CORPORATION or CITY. VENDOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XV.
AMENDMENTS

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both CORPORATION and VENDOR. The CEO may execute contract amendments on behalf of CORPORATION in the following circumstances a) revisions to attachments regarding the specifics of the program, to include modification of routes and depots, and the adjustment of the number of students requiring service, b) changes in state or federal regulations relevant to the program and the implementation of the services set out herein.

XVI.
SEVERABILITY

16.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII.
LICENSES/CERTIFICATIONS

17.1 VENDOR warrants and certifies that VENDOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII.
COMPLIANCE

18.1 CORPORATION and VENDOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIV.
NONWAIVER OF PERFORMANCE

19.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX.
LAW APPLICABLE

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

20.3 Neither CORPORATION nor CITY will contractually agree to engage in binding arbitration and will not contractually agree to relinquish their right to a trial by jury.

XXI.
LEGAL AUTHORITY

21.1 The signer of this Agreement for VENDOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of VENDOR and to bind VENDOR to all of the terms, conditions, provisions and obligations herein contained.

XXII.
PARTIES BOUND

22.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

22.2 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII.
DEBARMENT

23.1 VENDOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

23.2 VENDOR shall provide immediate written notice to CORPORATION, in accordance with Article XI - Notice, if, at any time during the term of this contract, including any renewals hereof, VENDOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXIV.
ENTIRE AGREEMENT

24.1 This Agreement, together with its attachments, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the provisions of this Agreement. The Parties agree that if the terms of this Agreement conflict with the Attachments or if the Attachments address items not addressed herein, the terms and content of this Agreement shall control and shall be binding on all parties.

EXECUTED and **AGREED** to as set forth below.

CORPORATION

VENDOR

Sarah Baray
CEO
Pre-K 4 SA

Eric Cooper
President
San Antonio Food Bank

Date: _____

Date: _____

Exhibits:

Attachment I - CACFP Policy Statement
Attachment II - Reporting/Regulatory
Compliance

DRAFT