

Attestation Sheet

By submission of this bid, the Food Service Management Company (FSMC) acknowledges that it has carefully examined all terms and conditions set forth in the Request for Proposal (RFP)/Cost Reimbursable Food Service Management contract in the bid document/solicitation issued by **St. Louis Public Schools and Ashley Community Schools** on **April 13th, 2020**. The FSMC acknowledges that it has made examinations and verifications and is fully conversant with all conditions under which services are to be performed for the **St. Louis Public Schools and Ashley Community Schools**. No claims for additional compensation will be considered and no contractual amendments will be executed due to the successful bidder's failure to be so informed.

The FSMC acknowledges that the School Food Authority (SFA) of Public School Districts reserves the right to reject any and all bids for a sound documented reason. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. [2 CFR 200.320 (c)(2)(v)]

The FSMC acknowledges that the School Food Authority (SFA) of Non-Public School Districts reserves the right to reject any and all bids when it is in the recipient's interest to do so. Awards will be made to the bidder whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. [2 CFR 200.320 (d)(4)]

Negligence in the preparation or presentation of, errors in, or omissions from bids shall not relieve the FSMC from fulfillment of any and all obligations and requirements of the proposed contract. Once a contract is executed, the FSMC shall not claim any modification thereof resulting from any representation or promise made at any time by an officer, agent, or employee of the **St. Louis Public Schools and Ashley Community Schools**, or any other person.

By submitting a bid, the FSMC agrees to execute a contract with the SFA and to perform services in accordance with the finalized contract documents.

Signature of Food Service Management
Company

Name of Food Service Management
Company

Date

Company Representative Name (print)

REQUEST FOR PROPOSAL

COST REIMBURSABLE CONTRACT

GENERAL PROCEDURAL TERMS AND CONDITIONS

A. INTENT

This solicitation is for the purpose of entering into a contract for the operation of a food service program for **St. Louis Public Schools and Ashley Community Schools** herein after referred to as the School Food Authority (SFA). The bidder or Food Service Management Company will be referred to as the FSMC and the contract will be between the FSMC and the SFA.

B. PROCUREMENT METHOD

The contract awarded will be a cost reimbursable contract.

The bid must be submitted in two parts: a bid price per meal/meal equivalent and a written and/or oral presentation. The bid price per meal/meal equivalent may be weighted more than 50% of the evaluation criteria while the written and/or presentation must be weighted less than 50%. This breakdown will be identified on the Bid Point Calculator and Evaluation Criteria Matrix. Bidders are required to provide a breakdown of food and non-food costs, management and administrative fees, and advance payments as shown on the Bid Sheet. Bids that do not provide this information will be deemed non-responsive and rejected.

The SFA may award the contract to the bidder which it believes, in its sole discretion, to best meet the SFA's needs. Alternatively, the SFA may reject all bids. An award may be made to other than the bidder with the lowest bid price per meal/meal equivalent.

C. BID SUBMISSION AND AWARD

1. Sealed bids/proposals are to be submitted to **Stacey Haag and Ben Engelter, Business Managers, at 113 E Saginaw St., St. Louis, MI, 48880**. Bids/proposals will not be accepted after **10:00 am on April 13th, 2020**.

The proposal is to be submitted in a sealed envelope marked "Food Service Management Proposal." Provide one (1) hard copy of the proposal to the SFA and two (2) electronic copies of the full proposal on a CD or a flash drive so that one copy may be sent to MDE. SFAs are required to submit a copy of the full proposal from its selected bidder to MDE during the contract approval process. CDs or flash drives and proposals from other responsive bidders should be made available upon request by MDE.

The bid sheet is to be submitted in a separate and sealed envelope marked "Bid Sheet – Cost Reimbursable Contract."

2. The SFA reserves the right to exercise its discretion to reject any or all bids.
3. To be considered, each bidder must submit a complete response to this solicitation using the forms provided.
4. Awards, if any, shall be made to a qualified and responsible bidder whose bid is responsive to this solicitation. A responsible bidder is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.

5. Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and he/she cannot secure relief of the plea of error.
6. If additional information is required, please contact **Stacey Haag at (989)681-2545 or Ben Engelter at (989)600-9087.**

D. INCURRED COSTS

The SFA is not liable for any cost incurred by the bidder prior to the signing of a contract by all parties.

E. CONTRACT TERMS

1. This contract shall be for an initial term of one year effective on July 1, **2020**, or upon written approval of the contract by the Michigan Department of Education, whichever occurs last, and ending June 30, **2021**, with up to four (4) one-year renewals, with mutual agreement between the SFA and the FSMC. [7 CFR 210.16 (d)]

In no event shall the contract be effective without the prior approval by MDE. Per 7 CFR 250.36 (a) (12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

2. Before any fee increases can be implemented as part of a contract renewal agreement, the FSMC shall document to the SFA, through a written financial analysis, the need for such increases. Renegotiation of management and administrative fees in subsequent years of the contract must not exceed the *Consumer Price Index for Urban Consumers – Food Away from Home* annualized rate for December of the current school year, or a flat percentage rate of **2%**, whichever is less.
3. This solicitation/contract, the RFP proposal of the successful bidder, attachments, and mutually negotiated and MDE-approved amendments, modifications, and addenda constitute the entire agreement between the SFA and FSMC. Aside from the adjustments and amendments referenced in Section (E) (2), supra, additional documents and/or agreements, including non-negotiated provisions developed by the contractor, cannot become part of the executed contract. Any additional documents resulting in a substantial change to the contract awarded by the SFA will not be executed by the SFA without prior MDE approval. No other food service management contracts will be signed by the SFA.
4. All state agency-mandated changes to the terms of this contract or any amendment will be incorporated therein before the SFA executes any agreement between it and the FSMC.

F. BID PACKET RELEASE AND PRE-BID MEETING INFORMATION

A copy of the RFP will be available by email at **shaag@giresd.net** by **April 6th, 2020**.

Interested bidders must meet to review the specification, to clarify any questions, and to go on a walk-through of the facilities with school officials on **March 12th, 2020** at **1:00pm** starting at the following location: **113 E.**

Saginaw Street, St. Louis, MI. 48880 and following up with a walk-through at Ashley Community Schools facilities. Attendance is required.

Potential bidders are asked to bring their questions to the pre-bid meeting. The school district will address these questions at that time and follow up via email. Final questions from bidders shall be submitted to the SFA via email by March 19th, 2020 and will be addressed by the SFA by **March 25th, 2020.**

G. LATE BIDS

Any bid received after the exact time specified for receipt will not be considered or opened publicly.

H. BONDING REQUIREMENT

The SFA has elected to require a bid guarantee.

Bidder shall submit with his/her bid a bid guarantee in the amount of five percent (5%) of the total bid price, which shall be in the form of a firm commitment such as a bid bond, postal money order, certified check, cashier's check or irrevocable letter of credit. Bid guarantees other than bid bonds will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents (i.e., insurance coverage) and bonds as may be required by the bid. [2 CFR 200.325 (a)]

I. GIFTS FROM FSMC

The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State or Federal law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards. [2 CFR 200.318(c)(1)]

J. SELECTION OF MANAGER

The district requests bids be submitted on the following managerial option(s):

A shared-time manager to be allocated as such: 80% St. Louis Public Schools, 20% Ashley Community Schools.

The SFA reserves the right to interview and approve the on-site food service manager. The FSMC will provide a Certified Food Manager per regulations established by the Michigan Department of Agriculture (MDA) effective June 30, 2009.

K. EMPLOYEES

The current food service employees will:

Remain employees of the FSMC.

The SFA and/or FSMC will provide a Certified Food Manager by building site per regulations established by the MDA effective June 30, 2009.

L. MEAL AND MEAL EQUIVALENTS

For the purpose of making the meal count computation, the number of lunches, breakfasts, snacks, and suppers will be based on a projection. The number of

lunches served will be determined by 1 lunch = 1 meal equivalent. The number of suppers served will be determined by 1 supper = 1 meal equivalent. The number of breakfasts will be determined by 2 breakfasts = 1 meal equivalent. The number of snacks will be determined by 3 snacks = 1 meal equivalent. The FSMC and SFA shall determine a la carte meal equivalents by dividing a projected net a la carte and catering revenue by the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. This equivalent factor will be adjusted annually by taking the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. The revenue shall include catering sales, adult meals, and a la carte sales to students and adults **less sales tax**. If applicable, revenue from vending machine sales will be included as part of the a la carte revenue.

M. FEES AND ALLOWABLE DIRECT COSTS (Cost Reimbursable Contract Only)

The following definition is provided to clarify costs included in the administrative fee: centralized company administrative cost, data processing, generalized marketing, training of management in company-specific areas, and legal fees.

The following definitions are provided to clarify allowable direct costs:

“Food” is defined as and limited to those items purchased for use in the preparation and service of student, adult, catered, and a la carte meals as specified under Terms and Conditions of this Agreement. This includes the cost of commodity handling and warehousing charges.

“Labor” is defined as and limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.

“Contracted Services” are costs incurred to pay for a service provided by another company. Typical costs would be laundry services, pest control, and periodic maintenance services. Those costs normally recognized as part of the FSMC administrative fee cannot be separately contracted for and charged to the SFA account.

“Transportation Cost” is cost incurred in operating a food service delivery vehicle. This would include gas, oil, tune-ups, and minor repairs. Cost of a purchased vehicle would be a capital expense.

“Non-food Expenses” are defined as paper supplies (including decorations), equipment rental, cleaning materials, travel as required for effective program management, uniforms, printing, taxes and licenses, insurance, and expenses as contractually obligated herein. Products embossed with the FSMC logo are not considered allowable direct cost items.

“Cost of Capital Equipment” is the cost of purchasing and installing equipment exceeding \$5,000.00, which has had prior approval of the SFA.

N. CAPTIONS

Captions in all sections of this document are provided only as a convenience, and shall not affect the interpretation of this instrument, its attachments, and addenda.

O. GUARANTEED RETURN

The SFA is not requesting a guaranteed return.

P. FRESH FRUIT AND VEGETABLE PROGRAM (FFVP)

The SFA does not currently participate in the Fresh Fruit and Vegetable Program but may do so in the future. If the SFA participates in the future, the SFA requests the FSMC be responsible for the following aspects of FFVP:

- Purchase of fruits and vegetables, including the cost of pre-cut produce
- Purchase of non-food items and supplies that are used in serving and cleaning of the fruits and vegetables
- Salaries and fringe benefits for employees engaged in preparing and distributing fresh fruits and vegetables and maintaining a sanitary environment

The SFA will provide assurance that the FSMC is completely apprised of all FFVP Policies and rules to guarantee the program is operated in compliance with FNS standards.

The SFA will regularly monitor FSMC operations to ensure compliance with relevant FFVP requirements and provisions of the contract.

If FSMC is going to charge costs other than the actual costs of fresh fruits and vegetables, they must clearly identify the flat rate fee (annual) charged to the SFA's FFVP on the bid sheet contained in the *Information Section* of the RFP. Additionally, the FSMCs are required to submit a FFVP cycle menu based on FNS Guidance.

FSMCs must document and track Fresh Fruit and Vegetable Program (FFVP) expenses separately and must make this documentation easily accessible for the SFA to review. This documentation must fully identify allowable costs and the allocation of costs charged to the FFVP. The SFA uses this information as the basis for its reimbursement claim under the FFVP.

Costs reported by the SFA for reimbursement from the FFVP grant must be allowable, actual costs, and fully documented. Labor costs, which must be minimal in either the "operating or administrative" category, must be reported by the SFA in a manner that clearly identifies the actual time allocated to the FFVP. Administration costs must not exceed 10% of the overall grant.

Q. PROFESSIONAL STANDARDS

The [final rule](#), "Professional Standards for State and Local School Nutrition Programs Personnel as required by the Healthy, Hunger-Free Kids Act of 2010," became effective July 1, 2015. Professional Standards resources can be located on the USDA website at [USDA, School Meals, Professional Standards](#) <http://www.fns.usda.gov/school-meals/professional-standards>.

The School Food Authority (SFA) and the Food Service Management Company (FSMC) must adhere to the hiring, training, and oversight standards set forth in the final rule, as well as any subsequent USDA or MDE

guidance/policies/procedures in relation to the final rule. ([USDA Final Rule - SP38-2016](http://www.fns.usda.gov/sites/default/files/cn/SP38-2016os.pdf) http://www.fns.usda.gov/sites/default/files/cn/SP38-2016os.pdf)

The SFA may delegate to the FSMC the responsibility to coordinate/provide/conduct trainings in accordance with the final rule. Training responsibility will be identified on the *Cost Responsibility Detail* page of the *Information Section*. The FSMC must annually provide documentation to the SFA showing compliance with the required training hours and topics completed by food service personnel.

STANDARD TERMS AND CONDITIONS

I. SCOPE AND PURPOSE

- A. The Food Service Management Company (FSMC) shall operate in conformance with the School Food Authority's (SFA) National School Lunch/USDA Foods Distribution, Special Milk, Summer Food Service, Afterschool Snack, Child and Adult Care Food Program, Fresh Fruit and Vegetable Program, and Breakfast Programs Permanent Agreement with the Michigan Department of Education (MDE) and attachments.
- B. The FSMC, as an independent contractor, shall have the exclusive right to operate the Child Nutrition Programs in which the SFA participates. Child Nutrition Programs include the National School Lunch Program (NSLP), and/or School Breakfast Program (SBP), and/or Special Milk Program (SMP), and/or Summer Food Service Program (SFSP), and/or Child and Adult Care Food Program (CACFP), and/or Fresh Fruit and Vegetable Program (FFVP).
- C. The FSMC shall be an independent contractor and, except as otherwise expressly stated herein, not an SFA agent or representative. The employees of the FSMC are not employees of the SFA. All FSMC employees shall remain directly accountable to the FSMC for the duration of this contract. Except as otherwise expressly stated in this agreement, the FSMC has the sole responsibility and authority to hire, assign, supervise, evaluate, and discipline any personnel assigned by it in the performance of this contract.
- D. The food service provided shall be operated and maintained as a benefit to the SFA's students, faculty, and staff.
- E. All income accruing as a result of payments by children and adults, federal reimbursements and state aid (i.e., 31d, 31f, 31a At-Risk), and all other income from sources such as donations, special functions, grants, loans, etc., shall be deposited in the SFA's food service account. Any profit or guaranteed return shall remain in the SFA food service account. The SFA and FSMC agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract, as required under 7 CFR 210.16 (c), 2 CFR 200.323 (d).
- F. The SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the MDE and the United States Department of Agriculture (USDA) regarding each of the Child Nutrition Programs covered by this contract. [7 CFR 210.16 (a)(2)]
- G. The SFA shall retain control of the Child Nutrition Programs food service account and overall financial responsibility for the Child Nutrition Programs.

- H. The SFA shall establish all selling prices for reimbursable and non-reimbursable meals/milk and a la carte prices. [7 CFR 210.16 (a)(4)]
- I. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA will be billed for the actual cost of food, supplies, and labor, plus a **markup (as documented on the FSMC signed and dated bid sheet)** and the FSMC overhead and administrative expenses, if applicable, for providing such service. If FSMC overhead and administrative expenses apply, FSMC must provide SFA with a detailed breakdown of the charges. USDA Foods shall not be used for these special functions.
- J. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction in accordance with the school district's Wellness Plan.
- K. The FSMC shall conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226, 235, 245, and 250; 2 CFR Part 200; and FNS instructions, final rules and policies, as applicable.
- L. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet, and those non-disabled students who are unable to consume their regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis when supported by a statement of the need for substitutes that includes recommended alternative foods, unless otherwise exempted by the Food and Nutrition Service, USDA. Such statement shall, in the case of a student with a disability, be signed by a medical doctor or, in the case of a non-disabled student, be signed by a recognized medical authority. There will be no additional charge to the student for such substitutions. [7 CFR 210.10 (g)]
- M. The FSMC shall, on a monthly basis, invoice the SFA a sum not to exceed the amount necessary to cover FSMC's expenditures for the Food Service Program. FSMC shall provide a reconciled monthly statement with costs listed in the following categories: (a) management fee; (b) administrative fee; and (c) operating expenses. Payment shall be due within thirty (30) days of the monthly invoice. A late charge per month **equal to (.5 %)** will be added to all unpaid balances in excess of thirty (30) days. Finance charges cannot be paid from the non-profit food service account.

II. SIGNATURE AUTHORITY

- A. The SFA retains signature authority for the application/agreement to participate in the **NSLP, and/or SBP, and/or SMP, and/or SFSP, and/or CACFP, and/or FFVP**, including, but not limited to, the Application Renewal, the Verification of Application Form, and letters to MDE to amend the application. [7 CFR 210.16 (a)(5)]
- B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement. [7 CFR 210.16 (a)(5)]
- C. The SFA shall not delegate signature authority to the FSMC in any of the areas identified in paragraphs A and B above.

III. FREE AND REDUCED PRICE MEALS POLICY

- A. The SFA shall be responsible for or may delegate to the FSMC the establishment and maintenance of the free and reduced price meals eligibility roster. [Food Service, Administrative Policy #3, SY 2008-2009]
- B. The FSMC shall implement an accurate point of service meal/milk count using the meal counting system submitted by the SFA in its application to participate in the Child Nutrition Programs and approved by the MDE, as required under 7 CFR Part 210.8. Such meal/milk counting system must eliminate the potential for the overt identification of free and reduced price eligible students under 7 CFR Part 245.8. The SFA shall evaluate the monthly meal claim information submitted by the FSMC and verify that the information is accurate before submitting a claim for reimbursement. [Food Service, Administrative Policy #3, SY 2008-2009]
- C. The SFA shall be responsible for or may delegate to the FSMC the development, distribution, and collection of the parent letter and application for free and reduced price meals and/or free milk. [Food Service, Administrative Policy #3, SY 2008-2009]
- D. The SFA shall be responsible for or may delegate to the FSMC the responsibility for accessing the direct certification report available from the Center for Educational Performance and Information (CEPI) each year or eligible students for free meals. Students on this report will not require an application from the parent/guardian. [Food Service, Administrative Policy #3, SY 2008-2009]
- E. The SFA shall be responsible for or may delegate to the FSMC the responsibility for the determination of eligibility for free and reduced price meals and free milk. Neither the SFA nor the FSMC will disclose confidential information that is not needed for meal counts from free and reduced price meal applications and/or the direct certification list, if used. The SFA will provide the FSMC with a list of children and their category of eligibility. This list must be updated when changes occur in a student's eligibility status. [Food Service, Administrative Policy #3, SY 2008-2009]
- F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk. [Food Service, Administrative Policy #3, SY 2008-2009]
- G. The SFA shall be responsible for or may delegate to the FSMC the responsibility for verifying applications for free and reduced price meals, as required by federal regulations. [Food Service, Administrative Policy #3, SY 2008-2009]
- H. The SFA shall be responsible for performing the annual on-site review. [Food Service, Administrative Policy #3, SY 2008-2009]
- I. The SFA shall retain responsibility for completing the tasks described in paragraphs B, F, and H and may delegate those tasks in paragraphs A, C, D, E, and G to the FSMC to complete on its behalf.

IV. USDA FOODS

- A. Any USDA Foods received by the SFA and made available to the FSMC or received by the FSMC on behalf of the SFA must accrue solely to the benefit

of the SFA's non-profit school food service program and shall be fully utilized therein. The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA's food service program, including the value of USDA Foods contained in processed end products, in accordance with 7 CFR 250.51 (a).

- B. The SFA shall retain title to all USDA Foods. [7 CFR 250.13 (c)]
- C. The FSMC is prohibited from entering into any processing contracts utilizing USDA Foods on behalf of the SFA. [7 CFR 250.50 (d)]
- D. The FSMC shall select, accept, and use the USDA Foods in as large quantities as may be efficiently utilized in the SFA's non-profit food service, subject to approval of the SFA.

The FSMC must utilize no less than 95% of the SFA's overall entitlement. If less than 95% is spent, the FSMC must submit justification of the underutilization of this federal program to the SFA as part of their mandatory annual reconciliation of USDA Foods.

Furthermore, the SFA will use all donated ground beef and ground pork products, and all processed end products in the SFA's food service, and all other USDA Foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods, in the SFA's food service. [7 CFR 250.51 (d)]

- E. The FSMC shall collaborate with the SFA on the selection of USDA Foods and they will accept and use USDA Foods in as large quantities as may be efficiently utilized in the SFA's non-profit food service on a monthly basis to ensure they will not accumulate excess inventory.

If the current selection of USDA Foods cannot be utilized in the food service program, either the SFA or FSMC must work directly with the SFA's chosen consortium to trade or obtain a different selection of food items prior to delivery to the FSMC or SFA. USDA Foods entitlement can be spent on a value-added (brown box), processed USDA Foods, or Department of Defense (DoD) fresh produce.

- F. The FSMC shall store and account for all USDA Foods separately from purchased food unless the SFA has chosen not to maintain a separate inventory. The FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of all USDA Foods. The FSMC shall submit to the SFA monthly inventory reports showing all transactions for processed and non-processed USDA Foods. The FSMC will ensure that its system of inventory management will not result in the SFA being charged for USDA Foods. Quarterly physical inventories of all USDA Foods must be conducted by the FSMC and supervised by the SFA. Failure by the FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of the USDA Foods. [7 CFR 250.16 (a)(6) and 250.52 (b)]
- G. The FSMC shall maintain records to substantiate that the full value of all USDA Foods is used solely for the benefit of the SFA. The FSMC must provide all documents as necessary for the independent auditor, MDE Reviewers, or agents of USDA who may perform onsite reviews of the food service management company's food service operation to ensure compliance

with the requirements for the management and use of USDA Foods [7 CFR 250.54 (d)(1) and (2)]

- H. The SFA must provide the FSMC with a copy of the quarterly Recipient Entitlement Balance Report from the Consortia.
- I. The values of all USDA Foods are to be based on the values at the time the SFA receives the USDA Foods from the Distributing Agency and are to be based on the USDA Commodity Value Listing pertinent to the time period. This listing is available from the following website:

[USDA, Food Distribution, Processor Pricing Reports](http://www.fns.usda.gov/fdd/processor-pricing-reports)
<http://www.fns.usda.gov/fdd/processor-pricing-reports>

School Year (SY) 2020 Material Pricing Information

Average Price File for Processors for SY 2020

- J. A year-end reconciliation shall be conducted by the SFA to ensure and verify correct and proper credit has been received for the full value of all USDA Foods received for use by the FSMC during the school year. [7 CFR 250.53 (a)(1)]

The SFA reserves the right to conduct commodity credit audits throughout the year to ensure compliance with federal regulations. [7 CFR 210 and 7 CFR 250]
- K. The FSMC shall be liable for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods and shall credit the SFA either monthly or through a year-end reconciliation. [7 CFR 250.15 (c)]
- L. The SFA and FSMC shall consult and agree on end products to be produced from USDA Foods during the time of this agreement. If an agreement cannot be reached, the FSMC shall utilize the USDA Foods in the form furnished by the USDA.
- M. Upon termination of the contract, the FSMC must return all unused donated ground beef, ground pork, processed end products, and at the SFA's discretion, return other unused donated foods. The SFA must ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's meal service in a school year. [7 CFR 250.52 (c)]

V. HEALTH CERTIFICATIONS

- A. The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility. [7 CFR 210.16 (a) (7)]
- B. The FSMC shall maintain, for the duration of the contract, state and/or local health certifications for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under 7 CFR 210.16 (c)(2).

VI. MEALS

- A. The FSMC shall serve meals on such days and at such times as requested by the SFA.

- B. The SFA shall retain control of the quality, extent, and general nature of the food service. [7 CFR 210.16 (a)(4)]
- C. The FSMC shall offer free, reduced price, and paid reimbursable meals to all eligible children participating in the **SBP**, and/or **NSLP**, and/or **CACFP Centers**.
- D. For the FSMC to offer a la carte food service, the FSMC must offer free, reduced price, and paid reimbursable meals to all eligible children. [7 CFR 210.16 (a)]
- E. The FSMC shall serve reimbursable **breakfasts, lunches, snacks, and suppers**, pursuant to the **SBP, NSLP, and/or SFSP**, and/or **CACFP**, where indicated on the enclosed *School District Information* forms.
- F. The FSMC shall serve reimbursable milk pursuant to the Special Milk Program (SMP) where indicated on the enclosed *School District Information* forms.
- G. The FSMC shall promote maximum participation in the Child Nutrition Programs.
- H. The FSMC shall provide the specified types of service in the schools/sites listed in the *School District Information* forms, which is hereby in all respects made a part of this contract.
- I. The FSMC shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.
- J. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern in accordance with 7 CFR 210.10, or that do not otherwise meet the requirements of the contract. [7 CFR 210.16 (c)(3)]

VII. BOOKS AND RECORDS

- A. The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly bills/invoices in a format approved by the SFA no later than **10** calendar days of the succeeding month in which services were rendered. Participation records shall be submitted in a timely manner to facilitate claims submission no later than the tenth (10th) day of the succeeding month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.
- B. The FSMC shall maintain records at the SFA to support all allowable expenses appearing on the monthly bill/invoice.
- C. The SFA and the FSMC must provide all documents as necessary for the independent auditor, MDE Reviewers, or agents of USDA to conduct the SFA's single audit. [7 CFR 210.22]
- D. Books and records of the FSMC pertaining to the Child Nutrition Program operations shall be made available, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain for audit, examination, excerpts,

and transcriptions by the SFA and/or any state or federal representatives and auditors, or longer should any audit for that time still be open.

[7 CFR 210.23 (c) and 250.16 (b)]

- E. If audit findings regarding the FSMC's records have not been resolved within the three (3) year period, the records must be retained beyond the three (3) year period, for as long as required for the resolution of the issues raised by the audit. [7 CFR 210.23 (c) and 250.16 (b)]
- F. The FSMC shall not remove state or federal required records from SFA premises upon contract termination.
- G. The SFA shall conduct a quarterly internal review of all records and documentation associated with the procurement of food and non-food items to ensure that the FSMC is complying with all applicable competitive procurement procedures according to 2 CFR Part 200.
- H. The FSMC shall surrender to the SFA upon termination of the contract all records pertaining to the operation of the food service, to include all food and non-food inventory records, menus, production records, product invoices, claim documentation, financial reports, and procurement documentation.
- I. FSMC shall purchase all food and other supplies required under this contract on the SFA's behalf. Title thereto shall remain with the SFA at all times. Such food and supplies shall be kept separate and apart from the other SFA property unless the SFA has chosen not to maintain a separate inventory. FSMC and SFA shall jointly inventory all purchased food and supplies at both the beginning and the end of this contract's term. SFA shall have access to the records of the food and supplies purchased to review and audit as it deems necessary.
- J. FSMC shall purchase all food and supplies for the SFA at the lowest prices possible consistent with maintenance of quality standards prescribed by the SFA, including taking advantage of all local trade discounts. All such transactions shall meet USDA procurement standards.

VIII. EMPLOYEES

- A. The SFA shall have final approval authority regarding the FSMC's hiring of a site manager.
- B. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC shall be responsible for supervising and training personnel, including SFA employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC. The FSMC shall maintain its own personnel and fringe benefits policies for its employees. All such policies shall be subject to SFA review upon demand.
- C. The FSMC shall provide Workers' Compensation coverage for its employees.
- D. The FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to use of the SFA's premises as established by the SFA and which are furnished in writing to the FSMC.

- E. The FSMC shall maintain its own personnel and fringe benefits policies for its employees, subject to review by the SFA.
- F. Staffing patterns shall be mutually agreed upon by the SFA and FSMC.
- G. The use of student workers or students enrolled in vocational classes in the food service shall be mutually agreed upon.
- H. The FSMC shall not hire employees in excess of the number required for efficient operation.
- I. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked two (2) full calendar weeks prior to the commencement of operation.
- J. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
- K. Pursuant to the requirements of Section 1230 and 1230a of the Michigan Revised School Code, the SFA shall request a criminal history check through the Michigan State Police, as well as a criminal records check through the Federal Bureau of Investigation, with regard to all persons assigned by FSMC to regularly and continuously work in any of the SFA facilities. FSMC agrees that it shall not assign any of its employees, agents, or other individuals to perform any services under this Agreement where such individuals would regularly and continuously work in the SFA facilities if such person has been convicted of any of the following offenses:
 1. Any "listed offense" as defined under Section 2 of the Michigan Sex Offenders Registration Act, MCL 28.722.
 2. Any offense enumerated in Sections MCL 380.1535a or 380.1539b or the Revised School Code, MCL 380.1535a; 380.1539b, for positions requiring State Board of Education approval.
 3. Any offense of a substantially similar enactment of the United States or another State.
 4. Any felony, provided that with prior written approval of the SFA's Superintendent and its Board of Education an individual regularly and continuously providing services under this Agreement at the SFA may be permitted to perform such services when, in the judgment of the Superintendent and Board of Education of the SFA, such individual's presence will not pose a danger to the safety and security of the SFA students or employees.
 5. Any offense that would, in the judgment of the SFA, create a potential risk to the safety and security of the students served by the SFA or employees of the SFA.

The SFA reserves the right to refuse FSMC's assignment of any individual, agent, or employee of FSMC to render services under this Agreement where the criminal record history of the individual (including any pending criminal charges) indicate, in the SFA's judgment, unfitness to perform services under this Agreement.

The FSMC agrees that it shall pay the costs associated with criminal history checks and criminal record checks required under this contract and which are

accomplished in order to comply with Section 1230 and 1230a of the Revised School Code with respect to FSMC's employees and agents.

- L. Notwithstanding the provisions of Section VIII and its subparts, the SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself/herself in a manner that is detrimental to the physical, mental, or moral well-being of the students.
- M. In the event of the removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- N. All SFA and/or FSMC personnel assigned to each school shall be instructed in the use of all emergency valves, switches, fire, and safety devices in the kitchen and cafeteria areas.
- O. Neither party shall during the term of the contract or one year thereafter solicit to hire, hire, or contract with the other party's supervisory employees. If this provision is breached, the breaching party shall pay and the injured party shall accept as liquidated damages an amount equal to six (6) months of the annual wages of the relevant employee.

IX. DESIGNATION OF PROGRAM EXPENSE

- A. The FSMC guarantees to the SFA that the bid price per meal and meal equivalent shall include the expenses as designated under the FSMC column for the *Cost Responsibility Detail Sheet*. The FSMC shall be responsible for negotiating/paying all employees' fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll.
- B. The SFA shall pay those expenses as designated under the SFA column of the *Cost Responsibility Detail Sheet*.

X. PAYMENTS AND FEES

- A. All bids shall be calculated based on the information provided by the SFA in the *Information Section* of this solicitation. All bids shall be submitted using the Bid Sheet – Cost Reimbursable Contract form.
- B. Allowable costs will be paid to the FSMC from the SFA's non-profit food service account. Such payment will be net of all discounts, rebates, and other applicable credits accruing to or received by the FSMC and any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA. All payment discounts, rebates and allowances obtained from vendors must go to the SFA's food service account. [7 CFR 210.21 (f)(i)]
- C. The FSMC must designate its costs to the SFAs as follows:

The FSMC must exclude all unallowable costs from its billing documents and certify that: (1) only allowable costs are submitted for payments; and (2) records have been established that maintain the visibility of unallowable costs, including directly associated costs, in a manner suitable for contract cost determination and verification. [7 CFR 210.21 (f)(ii)(B)]

- D. The FSMC's determination of its allowable costs must be made in compliance with applicable USDA and program regulations, and United States Office of Management and Budget cost circulars. [7 CFR 210.21 (f) (iii)]
- E. The FSMC must identify the amount of each discount, rebate, and other applicable credit on **each** bill or invoice presented to the SFA for payment and individually identify the amount as a discount, rebate or, in the case of other applicable credits, the nature of the credit. [7 CFR 210.21 (f) (iv)]
- F. The FSMC shall identify the method by which it will report discounts, rebates, and other applicable credits allocable to the contract, which are not reported before the contract's termination. [7 CFR 210.21(f)(v)]
- G. The FSMC shall maintain documentation of costs and discounts, rebates, and other applicable credits, which shall be furnished upon request to the SFA, MDE, and/or the USDA. [7 CFR 210.21 (f)(vi)]
- H. The FSMC must credit the SFA monthly for the value of all donated foods received for use in the school year (including both entitlement and bonus foods), including the value of donated foods contained in processed end products. Credit issued by the FSMC to the SFA for USDA donated commodity foods received shall be recorded on the monthly bill/invoice as a separate line item and shall be clearly identified and labeled. [7 CFR 250.51 (a)]
- I. The FSMC shall submit separate billing for special functions as outlined under the Standard Terms and Conditions section of this contract.
- J. The FSMC shall assume responsibility for payment of all vendor bills and accounts and invoice the SFA for these costs.

XI. MONITORING

- A. The SFA shall monitor the food service operation of the FSMC through periodic onsite visits to ensure that the food service is in conformance with all USDA program regulations. [7 CFR 210.16 (a)(3)]
- B. The records necessary for the SFA to complete the required monitoring activities must be maintained by the FSMC under this contract and must be made available to the Auditor General, USDA, MDE, and the SFA upon request for the purpose of auditing, examination, and review. [7 CFR 210.15]
- C. On a monthly and at least quarterly basis, the SFA shall conduct an internal reconciliation of invoices and supporting documentation to verify the accuracy of fees, allowable/unallowable costs, rebates, discounts, purchase credits, and USDA Food usage credits in accordance with 7 CFR 210.21 (f)(iv) and (vi); 250.51 (b) and Food Service Contracts Administrative Policy Memo #3, SY 2018-2019.

XII. USE OF ADVISORY GROUP/MENUS

- A. The FSMC shall participate in the formation and establishment and periodic meetings of the SFA advisory board, comprised of students, teachers, and parents to assist in menu planning.
- B. The FSMC must comply with the twenty-one (21) day menu developed by the SFA for: **NSLP** and **SFSP**, included in the request for bid/proposal. Any

changes made by the FSMC after the first twenty-one (21) day menu for the NSLP, and SFSP may be made only with the approval of the SFA. The SFA shall approve the menus no later than two (2) weeks prior to service.

XIII. USE OF FACILITIES, INVENTORY, EQUIPMENT, AND STORAGE

- A. The SFA will make available, without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B. The SFA may request of the FSMC additional food service programs. If the addition is a Child Nutrition Program not identified in the original RFP, prior to implementation the SFA must notify MDE and discuss whether the addition constitutes a material change to the contract. (Food Service Contracts Administrative Policy Memo #2, SY 2018-2019)

This does **not** include the expansion of food service operations outside the confines of the school/school district, such as expansion to non-affiliated charter schools, non-public, or neighboring public schools, which were not part of the original bid (see Information Section of the original bid packet). The SFA may refer these entities to MDE for proper procurement procedures.

- C. Per 7 CFR 210.11, competitive food refers to all food and beverages sold to students on the school campus during the school day, other than those meals reimbursable under the Child Nutrition Programs.

The SFA reserves the right, at its sole discretion, to sell or dispense food or beverages provided such use does not interfere with the operation of the Child Nutrition Programs.

The FSMC and the SFA shall adhere to USDA requirements of final rules relating to competitive foods, including the Smart Snacks rule that became effective July 1, 2014.

- D. The FSMC and SFA shall inventory the equipment and USDA Foods owned by the SFA including, but not limited to, silverware, trays, chinaware, glassware, and kitchen utensils. This will be performed at the beginning of the contract and at the beginning of each successive school year if the renewal option is utilized.
- E. The FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation and at the inventory level as specified by the SFA.
- F. The SFA will replace expendable equipment and replace, repair, and maintain non-expendable equipment, except when damages result from the use of less than reasonable care by the employees of the FSMC, unless otherwise identified on the *Cost Responsibility Detail Sheet*.
- G. The SFA will have final, prior approval authority for the purchase of all equipment to be used in the storage, preparation, and delivery of school meals. Title to the property must be vested with the SFA when the equipment is placed in service by the FSMC. Upon written agreement of the parties, the purchase amount shall be amortized on a straight-line depreciation basis beginning on the date upon which the equipment is placed in service, for a length of time upon which the parties shall mutually agree. If the agreement is terminated or non-renewed for any reason prior to full

amortization, the SFA may: (1) retain the property and continue to make payments in accordance with the amortization schedule, or (2) return the property in full release of the unpaid balance.

- H. Equipment purchases must be submitted to the MDE School Nutrition Programs unit for review and approval in accordance with the stipulations set forth in MDE Food Service Administrative Policy #13, SY 2014-2015.
- I. The FSMC shall maintain adequate storage, inventory, and control of USDA donated foods in conformance with the SFA's agreement with the Michigan Department of Education.
- J. The SFA shall provide the FSMC with local telephone service.
- K. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
- L. The SFA shall be responsible for any losses, including USDA donated foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
- M. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
- N. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
- O. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within ten (10) days of its placement on SFA premises.
- P. The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- Q. The FSMC shall not use the SFA's facilities to produce food, meals or services for other organizations without the approval of the SFA. If such usage is mutually agreeable, there shall be a signed agreement that stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
- R. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
- S. The FSMC shall surrender to the SFA upon termination of the contract all SFA equipment and furnishings in good repair and condition.

XIV. PURCHASES

- A. The FSMC shall purchase all food and supplies at the lowest price possible consistent with maintaining quality standards and in full compliance with 7 CFR Parts 210, 215, 220, 225, 226, 245, and 250 and Office of Management and Budget (OMB) Super-Circular 2 CFR 200 (replacing Circulars A-21, A-87, A-110, A-122, and A-133; and 7 CFR Parts 3016 and 3019).
- B. This contract shall not prevent the SFA from participating in food consortia. If the SFA does purchasing, the FSMC may not limit SFA selection of vendors to only FSMC-approved vendors.

XV. SANITATION

- A. The FSMC shall place garbage and trash in containers in designated areas as specified by the SFA.
- B. The SFA shall remove all garbage and trash from the designated areas.
- C. The FSMC shall clean the kitchen and dining room areas as indicated on the *Cost Responsibility Detail Sheet*.
- D. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with the standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
- E. The SFA shall clean ducts and hoods above the filter line.
- F. The SFA shall provide extermination services as needed.
- G. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

XVI. LICENSES, FEES, AND TAXES

- A. The FSMC shall be responsible for paying all applicable taxes and fees including, but not limited to, excise tax, state and local income tax, and payroll and withholding taxes for FSMC employees. The FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees. The extent of responsibility is designated in the cost responsibility attachment to this document.
- B. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.
- C. The FSMC shall comply with all SFA building rules and regulations.

XVII. INSURANCE AND INDEMNIFICATION

- A. The FSMC shall obtain and keep in force during the term of this Agreement, for the protection of the SFA and FSMC, and naming the SFA as an additional insured, Comprehensive General Liability Insurance to include, but not limited to, Personal Injury Liability, Property Damage Liability, Contractual Liability, and Products Liability covering only the operations and activities of the FSMC under this agreement. Minimum coverage shall be \$1,000,000 per incident/person.
- B. A Certificate of Insurance of the FSMC's insurance coverage, indicating the specified amounts, must be submitted at the time of award. The FSMC shall provide the SFA copies of all applicable insurance policies at the time of award. All insurance required as a result of a response to this RFP shall provide that the insurer will provide notice of cancellation directly to the SFA thirty (30) days before such cancellation occurs.
- C. The SFA shall keep its buildings, including the premises and all property contained therein, insured against loss or damage by fire, explosion, and similar casualties.

- D. The FSMC shall provide worker's compensation and unemployment insurance for its employees as specified in the *Cost Responsibility Detail Sheet*.
- E. The FSMC shall indemnify and hold harmless the SFA, or any employee, director, or agent of the SFA, from and against all claims, damages, losses, and expenses (including attorney's fees and court costs incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages to or destruction of property, resulting from the FSMC's acts, or omissions, willful misconduct, or breach of the FSMC's obligations under the Agreement by the FSMC and its agents, servants or employees, or other persons under its supervision or direction.
- F. The FSMC shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the SFA's sole acts or omissions.

XVIII. PROPRIETARY INFORMATION

- A. During the term of the Agreement, the FSMC may grant to the SFA a non-exclusive right to access certain proprietary materials of the FSMC including, but not limited to, signage, operating or other manuals, recipes, menus and meal plans, and computer programs relative to or utilized in the FSMC's business or the business of any affiliate of the FSMC.
- B. To the extent permitted by law, the SFA shall not disclose any of the FSMC's proprietary information or other confidential information, directly or indirectly, during or after the term of the Agreement. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the agreement.
- C. The SFA agrees that all proprietary computer software programs, marketing, and promotional literature and materials used by the FSMC and the SFA's premises in connection with the food services provided by the FSMC under this Agreement shall remain the property of the FSMC.
- D. Upon termination of the contract, all use of trademarks, service marks, and logos owned by the FSMC or licensed to the FSMC by third parties shall be discontinued by the SFA, and the SFA shall immediately return to the FSMC all proprietary materials.
- E. The FSMC acknowledges that, during the course of this contract, the FSMC shall have access to business systems, techniques, and methods of operation developed at great expense by the SFA. The FSMC recognizes these to be unique assets of the SFA's business. The FSMC agrees to keep such information confidential and shall not disclose such information directly or indirectly during or subsequent to the term of this Agreement.

XIX. NON-DISCRIMINATION

The parties to this contract agree not to discriminate against any employee, applicant for employment, student, or other recipient of services under this contract due to race, color, religion, sex, national origin, age, height, weight, disability, marital status or veteran status, or other legally protected classification. Breach of this section shall be regarded as material breach of this contract.

XX. EMERGENCY CLOSING

- A. The SFA shall notify the FSMC of any interruption in utility service of which it has knowledge.
- B. The SFA shall notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

XXI. TERM AND TERMINATION

- A. This contract shall become effective on July 1, **2020**, or upon written acceptance of the contract by the Michigan Department of Education, whichever occurs last, and terminate on June 30, **2021**, with up to four (4) one-year renewals with mutual agreement between the SFA and the FSMC. [7 CFR 210.16 (d)] Per 7 CFR 250.53 (a)(12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA Foods.
- B. The SFA or the FSMC may terminate the contract with or without cause by giving sixty (60) days written notice.
- C. Neither the FSMC nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of the FSMC or the SFA, respectively, and which by the exercise of due diligence they were unable to prevent.

XXII. NON-PERFORMANCE BY FSMC

- A. In the event of the FSMC's non-performance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.
- B. The FSMC shall pay to the SFA the full amount of any meal overclaims and fees associated with those overclaims, which are attributable to the FSMC's negligence, including those overclaims and associated fees based on review or audit findings, which occurred during the effective dates of the original and renewal years of the contract.

XXIII. CERTIFICATIONS

- A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- B. The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the "Act"), 40 U.S.C. §§ 327-330, as supplemented by the Department of Labor regulations, 29 CFR, Part 5. Under Section 103 of the Act, the FSMC shall be required to compute the wages of every laborer on the basis of a standard workday of eight (8) hours and a standard workweek of forty (40) hours. Work in excess of the standard workday or standard workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate

of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in any workweek.

- C. The FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations, 41 CFR Part 60. The FSMC shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a).
- D. The FSMC shall comply with all applicable civil rights laws, as amended which include, but are not limited to: Title VI and the Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities; the Michigan Elliott-Larsen Civil Rights Act; and the Michigan Persons with Disabilities Civil Rights Act.
- E. The FSMC shall comply with the Buy American provision for contracts that involve the purchase of food products with Federal funds, 7 CFR Part 250.23.
- F. Where applicable, the SFA or FSMC shall take affirmative steps to ensure small and minority businesses are solicited whenever they are potential sources and to use the services and assistance of the Small Business Administration and Minority Business Enterprise of the Department of Commerce as required [7 CFR 226.22(f)].
- G. Where applicable to contracts in excess of \$2,500 that involve the employment of mechanics or laborers, the Sponsor and Contractor shall comply with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330).
- H. The FSMC **has signed** the following certifications and attached to this RFP:
 - 1. Certificate of Independent Price Determination (also must be signed/dated by SFA prior to submission to MDE for approval)
 - 2. Suspension and Debarment Certification
 - 3. Clean Air and Water Certificate
 - 4. Disclosure of Lobbying Activities
 - 5. Certificate of Compliance with Public Act 517 (Iran Economic Sanctions Act)

XXIV. MISCELLANEOUS

- A. Except as otherwise expressly stated, this contract shall be construed under the laws of the State of Michigan. Any action or proceeding arising out of this contract shall be heard in the appropriate courts within the State of Michigan.
- B. The FSMC shall comply with the provisions of the bid specifications, which are hereby **in all respects made a part of this contract.**
- C. No provision of this contract shall be assigned or subcontracted without prior

written consent of the SFA and notification to MDE prior to implementation.

- D. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
- E. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
- F. Payments on any claim shall not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.
- G. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
- H. This contract is subject to review and approval by the Michigan Department of Education.

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

Both the School Food Authority (SFA) and Food Service Management Company/Vendor (offeror) shall execute this Certificate of Independent Price Determination.

Name of School Food Authority

Name of Food Service Management Company/Vendor

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

1. The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting completion, as to any matter relating to such prices with any other offeror or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to bid opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor.
3. No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

B. Each person signing this offer on behalf of the offeror certifies that:

1. He or she is the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to A1 through A3 above; or
2. He or she is not the person in other offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to A1 through A3 above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to A1 through A3 above.

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

Signature of Food Service Management Company/Vendor's Authorized Representative	Title	Date
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In accepting this offer, the SFA certifies that no representative of the SFA has taken any action which may have jeopardized the independence of the offer referred to above.

Signature of SFA's Authorized Representative	Title	Date
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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS:

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

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Executive Order 12689, and 31 U.S.C. 6101; Debarment and Suspension, 7 CFR Part 3017, Subpart C, Responsibilities of Participants Regarding Transactions.

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Food Service Management Company/Vendor

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

Signature(s)

Date

CLEAN AIR AND WATER CERTIFICATE

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act 33 1319(d) and is listed by EPA or the contract is not otherwise exempt. Both the School Food Authority (SFA) and Food Service Management Company/Vendor (offeror) shall execute this Certificate.

Name of School Food Authority

Name of Food Service Management Company/Vendor

THE OFFEROR AGREES AS FOLLOWS:

To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information as well as other requirements specified in Section 114 and Section 308 of the Clean Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.

To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).

The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c- 6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c- 7(d)).

The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating era, location or sites of operations, owned, leased, or supervised by the Food Service Management Company.

Signature of Food Service Management Company/Vendor's
Authorized Representative

Title

Date

**NOTICE TO APPLICANTS - CERTIFICATION/DISCLOSURE
REQUIREMENTS RELATED TO LOBBYING**

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress and any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires recipients and their subtier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress and any Federal agency in connection with a particular contract, grant, cooperative agreement or loan.
- You are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded.
- You will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, Federal Register (pages 6736-6746).

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

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of any Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Name of Food Service Management Company/Vendor

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

Signature(s)

Date

**CERTIFICATE OF COMPLIANCE
MICHIGAN PUBLIC ACT NO. 517 OF 2012
IRAN ECONOMIC SANCTIONS ACT**

Name of School Food Authority

Name of Food Service Management Company/Vendor

The undersigned, the owner, or authorized officer of the below-named company (the "Company"), pursuant to the compliance certification requirement provided in the School Food Authority's (SFA) Request For Proposal (RFP), hereby certifies, represents, and warrants that the Company (which includes its officers, directors and employees) is not an "Iran Linked Business" within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the "Act"), and that in the event the Company is awarded a contract by the School District as a result of the aforementioned RFP, the Company is not and will not become an "Iran Linked Business" at any time during the course of performing any services under the contract.

The Company further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or two (2) times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the SFA's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date it is determined that the person has submitted the false certification.

Signature of Food Service Management Company/Vendor's Authorized Representative

Title

Date

AGREEMENT PAGE – New Contract

Original Contract SY 2020-2021

This bidder has certified that he/she shall operate in accordance with all applicable State and Federal laws and regulations.

This solicitation/contract, attachments, and the RFP proposal of the successful bidder, with addenda, if any, constitute the entire agreement between the SFA and FSMC. The parties shall not execute any additional contractual documents pertaining to this RFP, except as permitted by applicable law.

This Agreement shall be in effect for one year and may be renewed by mutual agreement for four (4) additional one-year periods.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representative on this day and year.

Bid Sheet Selected by SFA for Award: _____
(Insert plan type and/or advance payment option upon final bid award approval)

Attest:

St. Louis P. S. and Ashley C. S.
School Food Authority

Signature of Witness for SFA

Signature of SFA Representative

Print Name

Title

Date

Attest:

Food Service Management Company

Signature of Witness for FSMC

Signature of FSMC Representative

Print Name

Title

Date