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 **Lakeview Community Schools** on **February 22, 2010**. 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 **Lakeview 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) reserves the right to accept or reject any and all bids, to waive irregularities, and to accept the bid which, in the SFA's opinion, is in the SFA's best interest.

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 **Lakeview 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 Representative — Date

_____

Name of Food Service Management Company

Lakeview Community Schools

REQUEST FOR PROPOSAL/ COST REIMBURSABLE CONTRACT

Mandatory Pre-Bid Meeting: February 22, 2010
Bids Due: March 23, 2010 by 10:00 a.m.

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 **Lakeview 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 **Sara L Shriver, Director of Instruction**. Bids/proposals will not be accepted after **10:00 a.m.** on **March 23, 2010.**

   The proposal is to be submitted in a sealed envelope marked "Food Service Management Proposal." Provide at least three (3) hard copies of the proposal and two (2) copies of the proposal on a CD so that one copy of the CD can be sent to MDE for its files.

   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 on the plea of error.
6. If additional information is required, please contact **Sara L Shriver** at **989-352-7221 ext. 2402**.

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, 2010** or upon written approval of the contract by the Michigan Department of Education, whichever occurs last, and ending June 30, **2011** with up to four (4) one-year renewals, with mutual agreement between the SFA and the FSMC. In no event shall the contract be effective without the prior approval by MDE. Per 7 CFR 250.53 (a) (12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA donated commodity 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 0% rate, 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. **Mandatory PRE-BID MEETING**

Interested bidders must meet to review the specifications, to clarify any questions, and to go on a walk-through of the facilities with school officials on **February 22, 2010 at 10:00 a.m.** at the following location: **Lakeview Community Schools Administration Office, 123 Fifth Street, Lakeview, MI 48850**. Attendance is required.

G. **LATE BIDS**

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

H. **BONDING REQUIREMENT**

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, cashiers 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.

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.

J. **SELECTION OF MANAGER**

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, and snacks will be based on a projection. The number of lunches served will be determined by 1 lunch = 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 the purchase of a vehicle would be a capital expense.

"Non-food Expenses" are defined a 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 $5000.00, 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 effect the interpretation of this instrument, its attachments, and addenda.

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/Commodity Distribution Special Milk, Afterschool Snack, 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 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).

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 and state reimbursements, 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 the 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), 7 CFR 3016, and 7 CFR 3019.

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.

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.

I. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc, as requested by the SFA. The SFA or requesting organization will be billed for the actual cost of food, supplies, and labor; plus a mutually agreed upon mark up and the FSMC overhead and administrative expenses if applicable, for providing such service. USDA commodities 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, 245, and 250 and FNS instructions 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 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.

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. All overdue invoices are subject to finance charges as the parties shall agree in writing. 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 including, but not limited to the School Meals Program Year End Report (A and/or R), Application Renewal, the Verification of Application Form, and letters to the MDE to amend the application.

B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement.

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.

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.

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.

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 of eligible students for free meals. Students on this report will not require an application from the parent/guardian.

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 or 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.

F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk.

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.

H. The SFA shall be responsible for performing the annual on-site review.

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 DONATED COMMODITY FOOD

A. Any USDA donated commodity food received by the SFA and made available to the FSMC 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 donated foods received for use in the SFA's mail service program, including the value of donated foods contained in processed end products, in accordance with 7 CFR 250.51(a).

B. The SFA shall retain title to all USDA donated commodity food.

C. The FSMC is prohibited from entering into any processing contracts utilizing USDA donated commodity food on behalf of the SFA.

D. The FSMC shall select, accept, and use USDA donated commodity food 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 will use all donated ground beef and ground pork products, and all processed end products in the SFA's food service, and all other donated commodity foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service.

E. The FSMC shall store and account for all USDA donated commodity food 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 donated commodity food. The FSMC shall submit to the SFA monthly inventory reports showing all transactions for processed and non-processed USDA donated commodities. The FSMC will ensure that its system of inventory management will not result in the SFA being charged for donated commodity foods. Quarterly physical inventories of all donated commodities 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 donated commodity food.

F. The FSMC shall maintain records to substantiate that the full value of all USDA donated commodity food 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 donated commodity foods.

G. The SFA must provide the FSMC with a copy of the quarterly Recipient Entitlement Balance Report from MDE and/or Consortia.

I. The values of all USDA donated commodity foods are to be based on the values at the time the SFA receives the commodities 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 Michigan Department of Education, Fiscal Management and Food Distribution Program at the following website:

http://www.michigan.gov/documents/mde/CommodityFile11-15-08_299205_7.pdf

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 donated commodity food received for use by the FSMC during the school year. 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 donated commodity food and shall credit the SFA either monthly or through a year-end reconciliation.

L. The SFA and FSMC shall consult and agree on end products to be produced from USDA donated commodity food during the time of this agreement. If an agreement cannot be reached, the FSMC shall utilize the donated commodities in the form furnished by the USDA.

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.

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).

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.

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 SFSP.

D. In order 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.

E. The FSMC shall serve reimbursable lunches, breakfasts, and snacks pursuant

to the SBP, NSLP, and/or SFSP, where indicated on the enclosed *The School District Information* forms.

F. The FSMC shall serve reimbursable milk pursuant to the SMP, where indicated on the enclosed *The 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, or that do not otherwise meet the requirements of the contract.

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 15 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.

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.

E. If audit findings regarding the FSMC's records have not been resolved within the three (3) year record retention 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.

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 7 CFR Parts 3016 and 3019.

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. The records shall be in appropriate order and complete to the extent necessary to reconstruct individual cost of prior FSMC billings.

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 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. The 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:

    a. Any "listed offense" as defined under Section 2 of the Michigan Sex Offenders Registration Act, MCL 28.722;or

    b. 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; or

    c. Any offense of a substantially similar enactment of the United States or another State; or

    d. 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 or security of the SFA students or employees; or

e. 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 records 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, which 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 of 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. PAYMENT 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.

C. The FSMC must designate its costs to the SFA as follows:

    a. For each cost submitted for payment to the SFA, the amount of that cost that is allowable (i.e., can be paid from the SFA's non-profit school food service account) and the amount that is unallowable (i.e., cannot be paid from the SFA's non-profit school food service account); or

    b. 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.

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.

E. The FSMC must identify the amount of each discount, rebate, and other applicable credit on bills or invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.

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.

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.

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), and 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.

I. The FSMC and SFA shall determine a la carte meal equivalents by dividing the 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.

J. The FSMC shall submit separate billing for special functions conducted outside of the nonprofit school food service account.

K. 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 on-site visits to ensure that the food service is in conformance with all USDA program regulations.

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, the USDA, the MDE, and the SFA upon request for the purpose of auditing, examination, and review.

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/or SBP, 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/or SBP 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. Per 7 CFR 210.11, competitive foods means any foods sold in competition with the Program to children in food service areas during the lunch periods. The SFA may request of the FSMC additional food service programs;

however, 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. However, 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.

C. The FSMC and the SFA shall inventory the equipment and commodities 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.

D. 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.

E. 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.

F. 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 to the FSMC in full release of the unpaid balance.

G. The FSMC shall maintain adequate storage practices, inventory, and control of USDA donated foods in conformance with the SFA's agreement with the Michigan Department of Education.

H. The SFA shall provide the FSMC with local telephone service.

I. 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.

J. 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.

K. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.

L. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.

M. 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.

N. 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.

O. 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, which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.

P. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.

Q. 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 non-food commodities at the lowest price possible consistent with maintaining quality standards and in full compliance with Office of Management and Budget (OMB) Circulars A-87 and A-110, 7 CFR Parts 210, 215, 220, 225, 245, 250, 3016, and 3019.

B. This contract shall not prevent the SFA from participating in food consortia or purchasing food from vendors with whom the FSMC normally does not do business.

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/per 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 contain 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 attorneys' 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 nonexclusive 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, 2010 or upon written acceptance of the contract by the Michigan Department of Education, whichever occurs last, and terminate on June 30, 2011 with up to four (4) one-year renewals with mutual agreement between the SFA and the FSMC. Per 7 CFR 250.53 (a) (12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA donated commodity 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.

D. The FSMC shall comply with all applicable civil rights laws, as amended, which include but are not limited to: Title VI and 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. The FSMC **has signed** the Certification of Independent Price Determination, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.

G. The FSMC **has signed** the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.

H. The FSMC **has signed** the Certification Regarding Clean Water and Air, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.

I. The FSMC **has signed** the Certification Regarding Disclosure of Lobbying Activities, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.

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.

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, Fiscal Management and Food Distribution Program.

AGREEMENT PAGE

This bidder 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.

ATTEST:

_____
Signature of Witness for SFA

SCHOOL FOOD AUTHORITY:

_____
Signature of SFA Representative

_____
Dr. Dixie Pope

_____
Superintendent

_____
(Date)

ATTEST:

_____
Signature of Witness for FSMC

FOOD SERVICE MANAGEMENT COMPANY

_____
Signature of FSMC Representative

_____
Name

_____
Title

_____
Date

SUCCESSFUL BIDDER CERTIFICATIONS

These forms have been completed by each food service management company and posted to the following website:

http://www.michigan.gov/documents/mde/Bidders_Certification_Sheets_SY_2008_253622_7.doc

Certificate of Independent Price Determination

Suspension and Debarment Certification

Clean Air and Water Certificate

Disclosure of Lobbying Activities

They are listed by name of the management company. When the SFA determines the recommended successful bidder, it will need to download the management company's signed certificates. The Certificate of Independent Price Determination will need to be signed by the SFA and submitted with the final contract for MDE approval.

A copy of each certificate will be retained by the school district for its file.