

**SCHOOL FOOD
SERVICE AGREEMENT
2017/18**

THIS AGREEMENT is made this 1st day of July, 2017 by and between **TAHER, INC.**, a Minnesota corporation, with its principal place of business at 5570 Smetana Drive, Minnetonka, MN 55343 (“FSMC”) and **BELLE PLAINE PUBLIC SCHOOLS #716**, 130 South Willow Street, Belle Plaine, MN 56011 (“SFA”).

THE PARTIES AGREE AS FOLLOWS:

1. **Effective Date; Term.** This Agreement shall be effective as of August 1, 2017, and shall continue for a term of one year ending June 30, 2018.
2. **Personnel Matters.**
 - A. Approval by SFA; Compliance. FSMC shall employ all management employees reasonably necessary for efficiently managing the Food Service. Existing non-management employees will continue to be employed by the SFA, with all new employees being hired by the FSMC. Non-food service personnel such as custodians, noon-duty aides, and office personnel shall be the responsibility of SFA. Food Service personnel shall be subject to regulations and health examinations as SFA may require and as established by applicable governmental requirements. The person to be employed as FSMC’s resident manager shall be subject to SFA’s approval, which approval shall not be unreasonably delayed or withheld. FSMC shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the Department of Labor Regulations (29 CFR Part 5) pursuant to 7CFR, Section 3016.36(i)(6).
 - B. Non-discrimination; Equal Opportunity Employment. The FSMC agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93 112, as amended; the American's With Disabilities Act of 1990, Public Law 101-336 Executive Order 11246 (Equal Employment Opportunity); as amended by Executive Order 11375, and as supplemented in the Department of Labor regulations (41 CFR, Part 60) pursuant to 7CFR, Section 3016.36(i)(3); and the Minnesota Fair Employment Practice Act, as amended, in that there shall be no discrimination against any employee who is employed in the performance of this agreement or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex or martial status. This provision shall include, but shall not be limited to, the following employment, promotion, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The FSMC agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any

program or activity of the FSMC. The FSMC further agrees to insert similar provisions in all contracts for services allowed under this agreement under any program or activity. All solicitations or advertisements for employees placed by FSMC shall include the phrase "Equal Opportunity Employer" or a similar phrase. FSMC shall comply with all applicable provisions of the federal Equal Opportunity Federal Contract Compliance Program.

C. FSMC shall conform with all civil rights requirements applicable to the SFA.

3. **FSMC's Compensation; SFA's Target Net Return.**

A. General Compensation Structure. The gross receipts from FSMC's operation of the Food Service shall be retained by SFA, including all cash, credits, reimbursements and commodity payments. Foods received by the SFA will be turned over to the FSMC for use only in SFA's school lunch program. The FSMC shall provide a report that identifies contents of each deposit by the type of sale to SFA at the close of each month. The SFA shall maintain control of the school lunch account, has overall financial responsibility for the food service and shall pay the FSMC from the gross receipts deposited in the SFA's food service bank account a "Management Fee" and reimburse FSMC for FSMC's "Costs of Business" as those terms are defined below.

B. Definitions. The following definitions shall be used in this Agreement:

1) 1) Billing Rates: FSMC shall provide the Food services on a basis whereby FSMC shall be reimbursed for the maximum meal cost of \$2.84 for each basic reimbursable lunch, \$1.45 for each reimbursable breakfast served on the "Premises". Ala carte equivalents shall be reimbursed at \$3.17 and the special milk program at \$.35.

2) Meal Equivalent. The term "Meal Equivalent" shall mean the total of the sales for a la carte items, milk, and miscellaneous items in the operation of the food service divided by the equivalent rate of \$3.45 per meal.

3) Costs of Business. The term "Costs of Business" shall mean the sum of all costs, charges, and expenses incurred by FSMC in connection with its operation of the Food Service including, but not limited to the following items:

a) FSMC's direct cost of labor for the supervision of the Food Service, including wages and overtime, salaries, bonuses, retirement plans, vacation, sick pay and severance pay; group benefits such as health insurance and pension; worker's compensation and unemployment compensation insurance; payroll taxes, employee meals, travel expenses and other directly related labor costs;

b) SFA's costs of all non-management hourly Food Service Employees employed by the SFA shall be paid by the SFA directly to the said employees per SFA's ongoing Board of Education approval practices and negotiated agreements.

The total payroll costs for the food service shall be charged to the food service program;

c) FSMC's cost of food and beverages purchased by it for the operation of the Food Service, excluding donated foods but including applicable taxes and delivery charges, less all applicable discounts and rebates that will be subtracted on the original invoice;

d) SFA's cost of merchandise, materials, expendables and supplies purchased by it for the operation of the Food Service;

e) FSMC's costs of all other operating expenses incurred by it with respect to its operation of the Food Service including, but not limited to: costs of licenses, permits, maintenance and rental expenses, rent, security costs and cash losses or disappearances incurred by FSMC on SFA's Premises not involving FSMC's employees or agents, information systems, software, armored car services, promotions or proprietary materials, decorations, necessary overnight delivery, general liability insurance based on the average manual rates for such insurance in the geographic area of SFA's Premises, other insurance maintained pursuant to the Agreement, out-of-pocket travel and related expenses for training of employees assigned to the Food Service operation, including the costs of an on-site trainer temporarily assigned to SFA's Premises, sales and use taxes; and any other services related to the operation of the Food Service;

f) Any tax, plus any interest and penalties, which any government determines is payable by FSMC in the operation of the Food Service;

C. Assumptions. Financial terms of this Agreement are based upon the following assumptions (the "Assumptions"), based on information supplied by SFA:

1) That all relevant federal, state and local statutes, rules and regulations relating to school lunch and breakfast programs in effect as of the date hereof shall remain consistent throughout the term of this Agreement;

2) That SFA will comply with all federal and state requirements, rules and regulations pertaining to school lunch and breakfast programs and that SFA will obtain all available school lunch and breakfast reimbursements;

3) That the quantity, quality and variety of donated foods throughout the term of this Agreement will be a minimum of \$.23 per reimbursable meal served;

4) That the hours of service of meals, service requirements, type or number of facilities selling food and beverages on SFA's Premises will remain consistent throughout the year;

5) That the federal reimbursement rate will be a minimum of \$3.22 for each free lunch, \$2.82 for each reduced price lunch and \$.35 for each paid lunch (with the \$.06 per lunch for the HHFKA reimbursement included in each); the State reimbursement rate will be a minimum of \$.125 for all reimbursable meals served. The federal reimbursement rate will be a minimum of \$1.71 for each free breakfast, \$1.41 for each reduced price breakfast and \$.29 for each paid breakfast; the State reimbursement rate will be \$.55 for all paid breakfasts served and \$.30 on reduced breakfasts;

6) That the prices charged for school lunches will be a minimum of \$2.45 for elementary students, \$2.60 for secondary students, and \$3.95 for adults; that the prices charged students for school breakfasts will be \$1.30 for students and \$1.90 for adults; \$.45 for ala carte milk; and that these charges will remain constant through the term of this Agreement;

7) That SFA's enrollment will be at or above the information presented in the District's RFP;

8) That there will be at least 174 days for lunch and for breakfast in Food Service operation plus the summer program when applicable. If there is a significant deviation in the days of service, there may need to be a recalculation of the budgeted return; and

9) That there occur no fires, floods, wars, riots, strikes, labor unrest, weather, or other events or acts beyond FSMC's control, which adversely affect the cost of FSMC's performance of this Agreement.

D. SFA's Expenses Charged to Inventory. Prior to the start of initial operation of the Food Service, SFA and FSMC will take a beginning inventory of all usable food, supplies and donated foods on SFA's Premises. FSMC shall use such inventory which it determines, in its reasonable discretion, is usable in the Food Service at a value determined by invoice cost. On termination of this Agreement, SFA and FSMC will take another inventory of the usable food, supplies and donated foods on hand at that time. All inventories shall remain on SFA's Premises.

E. Budget. Prior to May 1 of each year, FSMC shall submit a budget for the upcoming school year pursuant to the Assumptions. The approved budget is attached as Exhibit A. The variance of actual occurrences during the upcoming school year from the Assumptions shall be at the risk of SFA. If any of the Assumptions shall prove to be inaccurate, the financial terms of this Agreement, outlined in paragraph 10C shall be adjusted in proportion to the actual occurrences.

F. SFA's Net Return; Unanticipated Profits. Provided that actual occurrences do not vary from the Assumptions and the information provided in the SFA's Request for Proposal, FSMC's budget provides for a net return to the SFA on the Food Service of \$82,498.30 for the school year ("Target Net Return") to be used for school district costs associated with the food service program. Any and all guaranteed returns must

remain in the SFA's nonprofit food service fund. The budget for the 2017/18 school year is based on 221,444 meals. Participation includes Reimbursable Meals and Equivalent Meals.

4. **Accounting; Reports; Invoices.** The FSMC shall furnish SFA with any required report and supporting records including detailed breakouts of all income and expenditure categories for submission in connection with governmental reimbursement programs. The FSMC shall, at a minimum by the 20th day of the month, report claim information to the SFA and will maintain and have available upon request documentation including invoices, etc. for all costs charged to the SFA.

5. **Payment; Deposit.** FSMC shall account to SFA on a calendar month basis over ten (10) months beginning on the first month of the school year. Following the end of each month, FSMC shall submit to SFA an itemized monthly statement setting out the number of meals for the month in each category at the approved billing rate for each. Invoices are payable within thirty (30) days of receipt following the SFA's normal billing process, with past due amounts subject to a monthly service charge of 1.5% per month (or maximum legal rate if lesser) and collection costs (including reasonable attorneys' fees) as incurred. Any interest payments due FSMC for non-payment shall not be paid to FSMC out of the nonprofit lunch fund, but rather SFA's general fund. Before the school year begins, FSMC shall establish a deposit account with FSMC equal to one month's estimate of meals. On the final invoice for the school year, FSMC shall credit SFA's deposit and any net credit balance shall be paid to SFA.

6. **Audit.** SFA, any State Agency administering the NSLP or the NSBP, the U.S. Department of Agriculture, and the U.S. General Accounting Office shall have the right to inspect FSMC's records relating to the operation of the Food Service. A copy of such records pertaining to SFA's food service operation under this Agreement shall be retained on SFA's property and shall be made available upon request at its principal offices during regular business hours within ten days after its receipt of a written request for an inspection. FSMC shall maintain its records pertaining to each school year during which it operated the Food Service including the records to support the SFA's Claim for Reimbursement for a period of five years after the end of such school year or for such longer period as SFA shall notify FSMC is required by law. In instances where issues relating to the audit of certain records have not been resolved within the prescribed retention period, the records shall be retained until such issues have been resolved.

7. **Indemnity.**

A. **FSMC's Obligation.** FSMC shall indemnify and hold SFA harmless from and against all claims, liability, losses, costs, expenses including reasonable attorney's fees, and damages arising out of production, preparation, sales and delivery of food products by FSMC or out of FSMC's use of delivery vehicles; provided, however, that SFA shall give FSMC and its insurers the opportunity to defend, litigate and settle such claims and SFA shall cooperate in such defense.

B. **SFA's Obligation.** SFA shall indemnify and hold FSMC harmless from and against all claims, liability, losses, costs, expenses including reasonable attorney's fees, and damages arising out of any personnel action taken by SFA or by FSMC at SFA's direction or out of injury or death of persons or damage to property, except those

described in paragraph 14A above, if such claims are covered by insurance maintained by or for the benefit of SFA. SFA shall also indemnify and hold FSMC harmless from and against any liability or assessment, including related interest and penalties, arising from tax assessment on the Food Service operation other than FSMC's employee taxes and city, state or federal income taxes, and shall pay expenses, including reasonable attorney's fees, incurred by FSMC in enforcement of the indemnity.

- C. Mutual Obligations. Each party shall indemnify and hold the other harmless from and against any claims, liability, losses, costs, expenses including reasonable attorney's fees, and damages arising out of any injury (whether to body, property, or personal or business character or reputation) sustained by any person or to any person or to property by reason of any act, neglect, default, or omission of it or any of its agents, employees, or other representatives, and it shall pay all sums to be paid or discharged in case of an action for any such damages or injuries. If either party is sued in any court for damages by reason of any of the acts of the other party referred to herein, such other party shall defend said action, or cause same to be defended, at its own expense and shall pay and discharge any judgment that may be rendered in any such action. If such other party fails to or neglects to so defend the said action, the party sued may defend the same and any expenses, including reasonable attorneys' fees, which it may pay or incur in defending said action and the amount of any judgment which it may be required to pay shall be promptly reimbursed by the other party upon demand. Nothing herein is intended to nor shall it relieve either party from liability for its own acts, omissions, or negligence.
- D. Survival. This paragraph shall survive termination of the Agreement.

8. **Insurance.**

- A. FSMC's Obligation. FSMC shall maintain, as a direct cost of operation, Worker's Compensation insurance as required by law; General Liability, including products liability, insurance with limits of \$2,000,000 for injury or death of any one person, \$5,000,000 for injury or death of two or more persons in any one occurrence; and \$500,000 for property damage for each occurrence; and Automobile Liability insurance with limits of \$1,000,000 for injury or death to any one person, \$3,000,000 for injury or death of two or more persons in any one occurrence; and \$500,000 property damage for each occurrence. At SFA's request, FSMC shall deliver to SFA certificates evidencing such insurance.
- B. SFA's Obligation. SFA shall maintain fire and extended coverage insurance on SFA's Premises, the equipment and the utensils for their full insurable value. SFA shall endeavor to secure an appropriate clause in or an endorsement upon, each fire or extended coverage or rent insurance policy obtained by it covering SFA's Premises and the equipment, fixtures, and other personal property located thereon, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against such third party. The waiver of subrogation or permission for waiver of

any claim shall extend to FSMC and its employees and agents. At FSMC's request, SFA shall obtain and deliver to FSMC certificates evidencing such insurance.

9. **Laws; Licenses; Taxes.** FSMC shall comply with all State and Federal statutes, rules, and regulations applicable to its management of the Food Service which now exist or which may be promulgated during the term of this Agreement including the Federal Regulations set forth at 7 C.F.R. Parts 210.1-210.16 and 210.21-210.23; 7 C.F.R. Part 3015 and its Attachment OMB Circular A-102; and the procurement standards of the State of Minnesota which provide for maximum open and free competition, all of which are considered part of this Agreement. FSMC also agrees to comply with the Buy American provision under 7 CFR Part 250. The SFA shall ensure applicable health certifications are maintained. The FSMC's operations, to include preparing and serving meals, will be in compliance with all applicable local, State, and Federal regulations at the SFA's facilities. FSMC shall obtain necessary State or local health certification for any facility outside SFA's Premises in which it will prepare meals for use by SFA and shall maintain said certification during the term of this Agreement. SFA shall be responsible for collection and remittance of taxes assessed on the Food Service operation other than FSMC's employee taxes, and city, state or federal income taxes, which shall be the responsibility of FSMC.

10. **Independent FSMC.** FSMC is an independent FSMC and neither it nor its employees are employees of SFA. SFA is interested in the general nature and results and not the manner, method or means by which FSMC operates the Food Service. FSMC shall pay all taxes, withholdings and contributions required by law to be made with regard to its employees.

11. **Confidentiality.** SFA acknowledges and agrees that FSMC has expended considerable time and money in the development of systems, procedures, computer programs, forms, recipes, menus and other items of a proprietary nature which are unique to FSMC's way of conducting business in the operation of a food service ("Confidential Information"). SFA shall keep such Confidential Information confidential and shall not copy, divulge or otherwise use it. Upon any termination of this Agreement, SFA shall permit FSMC to remove all its Confidential Information from SFA's Premises and SFA shall promptly turn over to FSMC all Confidential Information in SFA's possession or under its control.

12. **Force Majeure.** FSMC shall not be responsible for any delay or failure to perform its obligations under this Agreement resulting from fires, floods, wars, riots, strikes, weather, or other events or acts beyond its control, provided, however, in the event of strike or other work stoppage which interferes with the operation of the Food Service, FSMC shall, upon SFA's request, take all reasonable steps to continue to provide Food Service, subject to reimbursement by SFA for all direct costs incurred by FSMC, or a portion thereof. FSMC shall submit to SFA an invoice for such costs and fees following the end of each month of such operation.

13. **Renewal.** This Agreement is renewable each year for two (1) additional one-year terms, at the SFA's discretion and by mutual agreement. The contract may be terminated at the option of either party upon written notice of non-renewal given to the other party at least sixty (60) days prior to the start of the school year. By May 1st of each year, the FSMC shall indicate its desire to renew this Agreement by submitting to SFA a budget for the operation of the Food Service for the upcoming school year. The budget shall contain all of the detail of the food service expenses and shall set out any amendments of the Assumptions on which FSMC has relied in

preparing the new budget. Also FSMC's General & Administrative and Management Fee amounts will be increased by the same rate as that of the Consumer Price Index for Food and Beverages Away from Home in the Midwest Region for the same period.

14. **Termination.** This Agreement shall be terminated as follows:

- A. For Cause. If either party breaches a material provision of this Agreement, the non-breaching party may give the breaching party notice of such breach. If the breach is remedied within ten days, in the case of failure to make payment when due, or within sixty days in the case of any other breach, the notice shall be null and void. If such breach is not remedied within the time specified, the party giving notice shall have the right to terminate this Agreement upon expiration of such remedy period. These rights of termination are not exclusive, but are in addition to any other rights available to a party at law or in equity.
- B. Without Cause. Either party may terminate this Agreement at any time without cause upon sixty days written notice to the other party.

Upon termination of this Agreement, FSMC shall be compensated as provided herein for its performance of this Agreement through the date of termination and FSMC shall surrender SFA's Premises, equipment and utensils in the same condition as received by FSMC, reasonable wear and tear excepted.

15. **Disputes.** Any disputes which cannot be resolved by the parties negotiating in good faith within thirty days shall be finally determined by litigation in the state or federal court located in the county of Hennepin, State of Minnesota. The costs and expenses, including reasonable attorney's fees, of the prevailing party shall be paid by the non-prevailing party to any such litigation. This Agreement shall be construed by and governed by the laws of the State of Minnesota.

16. **Assignment.** This Agreement shall inure to the benefit of and be binding on the successors and assigns of the parties but FSMC shall not sublet or assign to third persons any interest under this Agreement or in the operation of the food services without prior written consent of SFA.

17. **Notice.** Any notice required by or pertaining to this Agreement shall be in writing and shall be deemed sufficiently given if delivered in person or sent by certified mail, return receipt requested, to the address of the parties set forth below:

SFA:
Mr. Chuck Keller, Business Director
Belle Plaine Public Schools #716
130 South Willow Street
Belle Plaine, MN 56011

FSMC:
Mr. Bruce Taher, C.E.O.
Taher, Inc.
5570 Smetana Drive
Minnetonka, MN 55343

18. **Miscellaneous.** This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and supersedes any and all other oral, written, expressed or implied agreements between the parties pertaining to such subject matter. This Agreement shall only be changed by a written instrument signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. No waiver of any term, condition or covenant of this Agreement by a party shall be deemed to be a waiver by such party of any subsequent breaches of the same or other terms, covenants or conditions of this Agreement. This Agreement shall be governed by and construed in conformance with the laws of the State of Minnesota.

19. **Attachments.** The following documents are considered to be a part of this Agreement:

- *District Request for Proposal
- *Taher, Inc. Proposal Response RFP
- *Food Service Management Contract, Fixed Fee

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first above written.

SFA:

By: _____
Signature

Title: _____

Date: _____

FSMC:

By: _____
Signature

Title: _____

Date: _____