

ADDENDUM
SCHOOL FOOD SERVICE AGREEMENT
2005/06

The following is revised language for Sections 8.04, 9.03, 9.04(D) and 10.01 of the Food Service Agreement between **JACKSON PUBLIC SCHOOLS**, 522 Wildwood Avenue, Jackson, MI 49201 (called "Client") and **TAHER, INC.**, 5570 Smetana Drive, Minnetonka, MN 55343 (called "Contractor") dated as of July 1, 2004.

Contractor and Client agree:


- 8.04 In the event of strike or other work stoppage, which interferes with the food service operation on the Premises, upon request, Contractor will take all reasonable steps to continue to provide Food Services, subject to reimbursement by Client for all direct costs of operation incurred by Contractor, including an allowance for its general administrative costs of \$2,575 per month and a management fee of \$.0206 per meal for all meals served each month. Contractor shall submit to Client an invoice for such cost and fees following the end of the month.
- 9.03 The term Management Fee shall mean the sum of \$.0206 per meal for all meals served for both the summer and school year programs. In addition, Contractor shall charge Client an additional fee of \$.0015 for each 1% increase in participation provided that this additional fee does not diminish the guaranteed return.
- 9.04 The Costs of Business shall mean the sum of all costs, charges, and expenses incurred in connection with the Food Service operation including, but not limited to the following items:
- (D) Contractor's administrative costs of \$25,750 per school year, payable in ten (10) equal payments of \$2,575 per month, and \$2,575 per month for July and August if the Client participates in the USDA Summer meals program;
- 10.01 This Agreement shall be for one (1) year beginning July 1, 2005 and ending June 30, 2006. It is renewable for one (1) additional one-year term, unless at the option of either party, written notice of non-renewal is given to the other party at least sixty (60) days prior to the start of the school year. The General & Administrative and Management Fee amounts charged by the Contractor shall be negotiated annually and shall not be increased beyond the Consumer Price Index for All Urban Consumers, Food Away From Home.

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

JACKSON PUBLIC SCHOOLS

BY: William M. Hammon
TITLE: Deputy Supt
DATE: 7/20/05

TAHER, INC.

BY: 
Bruce Taher
TITLE: CEO
DATE: 7/17/05

SCHOOL FOOD SERVICE AGREEMENT

THIS AGREEMENT is dated as of July 1, 2004 between **TAHER, INC.**, 5570 Smetana Drive, Minnetonka, MN 55343 (called "Contractor") and **JACKSON PUBLIC SCHOOLS**, 522 Wildwood Avenue, Jackson, MI 49201 (called "Client").

Contractor and Client agree:

SECTION 1. AUTHORIZATION AND SERVICE AREA(S)

- 1.01 Contractor is authorized and directed to manage and operate the "Food Services" offered by Client relating to all of its school buildings.
- 1.02 Contractor's rights are exclusive and without charge to Contractor and shall apply to those "Premises" designated by the parties as reasonably necessary for efficient Food Services (including dining, serving, food preparation, storage and office areas). The food Premises shall not be used by others without (1) prior discussion with Contractor, and (2) during any such use, the presence of an employee of the Food Service Department whose wages shall be reimbursed by the user.

SECTION 2. SERVICE POLICIES, STANDARDS

- 2.01 Contractor shall be responsible for the management and operation of Food Services on the Premises including: general supervision of food service areas, employment of Food Service Director, ordering of food and non-food supplies, and supervision of sanitation and safety practices.
- 2.02 The food, confections and beverages ordered by Contractor shall be wholesome, palatable and nutritious and shall be professionally prepared and presented. Contractor shall receive no payment for meals that are spoiled or unwholesome at time of delivery, or do not meet the detailed specifications for each food component as specified in Federal Register, 7 CFR, 210.10, in the meal pattern or do not otherwise meet the requirements of this Agreement.
- 2.03 Contractor's meal service (1) shall serve students on such days and at such prices as Client shall prescribe; (2) shall be meals which follow the menus and recipes prepared by Contractor and approved by Client; and (3) shall meet the requirements prescribed by the National School Breakfast and Lunch Program (NSBP/NSLP) of the United States Department of Agriculture (called USDA) and additional requirements as established by the State of Michigan, Department of Education (called "State Agency"). Client shall retain signature authority for the Program Agreement, reimbursement claims, and free and reduced price meal applications as specified in 7 CFR 210.16 (a) (5).

- 2.04 As prescribed by Client, Contractor shall serve free/reduced price and full prices reimbursable meals to all eligible students in a non-discriminatory and confidential manner. The Client is responsible for developing, distributing, and collecting free and reduced price letters and applications. The Client is further responsible for determination of free and reduced price meals and will conduct hearings if necessary. The Client shall also comply with the USDA/NSBP/NSLP requirements for free and reduced priced meal application verification. Contractor and Client also agree that no child shall be discriminated against on the basis of race, color, national origin, age, sex, or disability.
- 2.05 Except as approved by Client, Contractor shall not engage in any other food service operations on the Premises.
- 2.06 The parties shall cooperate in promoting the nutrition education aspects of Client's food service program. In coordinating such efforts with classroom instruction, Contractor will make food preparation and storage areas available for visits by students at reasonable times.
- 2.07 Contractor shall periodically make good faith recommendations to Client regarding the quality, extent and general nature of food service operations, including prices to be charged; but at all times Client shall retain the right to make final decisions regarding such matters including pricing for all reimbursable meals, ala carte, adult meals and vending machines.
- 2.08 Any federally donated commodities received by Client and made available to Contractor will accrue only to the benefit of Client's nonprofit food service operation and be utilized therein. Such donated commodities shall be separate and apart from the purchased inventory of food and supplies. To the maximum extent feasible, Contractor shall use in the preparation of the meals and other food served to the children, usable food donated by USDA for the use of Client. Contractor shall maintain adequate storage, recipes, inventory, and control of such donated foods to ensure that its use is in conformance with Client's agreement with the State Distributing Agency. Contractor shall give the School Food Authority, USDA/NSBP/NSLP, and appropriate State representatives access to the donated commodities storage areas. In addition, failure by Contractor to maintain records required in using donated foods shall be considered prima facie evidence of improper distribution, use or loss of the donated foods. The Client shall obtain restitution from the Contractor in connection with any claim for improper distribution, use or loss of, or damage to the donated foods.
- 2.09 Contractor's food service operation will be in conformance with Client's agreement with the State Agency.

SECTION 3. CLEANING, LAUNDRY, MAINTENANCE, UTILITIES

- 3.01 Contractor shall be responsible for the washing of dishes, trays, pots, pans, and utensils; the cleaning and sanitation of food equipment, counters, and serving lines; supervision of the routine cleaning of cafeteria tables and chairs; and routine cleaning, sanitation and housekeeping in the kitchen and storage areas used by it.
- 3.02 Client shall be responsible for (1) heavy cleaning, stripping, waxing and maintaining in good condition the floors, walls, windows, vents, hoods, ducts, ceilings, light fixtures, drapes and blinds in the food service and dining areas; (2) insecticide and pest control service; and (3) building maintenance.
- 3.03 Client shall be responsible for removing rubbish and garbage after it has been placed by Client's employees in outside dumpsters furnished by Client.
- 3.04 Client shall furnish and maintain all utilities, including electricity, water and telephone service. Client shall not permit interruptions in utility service except in an emergency and in such case, agrees to notify Contractor immediately.
- 3.05 Contractor and Client shall comply with all applicable standards, orders or regulations issued pursuant to Section 306 of the Clean Air Act of 1970 as amended (42 USC 7606), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations. Contractor and Client will also comply with the mandatory standards and policies relating to energy efficiency as contained in the State energy conservation plan issued in compliance with Energy Policy and Conservation Act (PL 94-163).

SECTION 4. EQUIPMENT FIXTURES, FURNITURE, EXPENDABLES, VEHICLES

- 4.01 Contractor shall take reasonable care in the use of the Premises, equipment, vehicles, and other items furnished by Client.
- 4.02 Client shall provide and maintain fixed/movable equipment, fixtures and furniture reasonably necessary and convenient to efficient operation and control of Food Services by Contractor, except Contractor shall be responsible for its own negligence.
- 4.03 Client shall replace expendable equipment as the items become worn, broken, used, lost or otherwise disposed of, up to the amount of the original inventory, except Contractor shall be responsible for its own negligence.

SECTION 5. PERSONNEL

- 5.01 Contractor shall employ all on-site management reasonably necessary for efficiently providing the Food Services. The individual employed as Contractor's resident manager is subject to Client's approval, which will not be unreasonably withheld.

- 5.02 Contractor hire and supervise food service employees that are acceptable to Client and shall control the terms and conditions of the employment of such employees, including, but not limited to, control over hiring, firing, termination, promotion, discipline and levels of compensation. Contractor further agrees to be fully responsible for all payroll costs, related taxes, insurance, retirement benefits, and any other cost mutually agreed upon with the employees.
- 5.03 Client shall not, without written consent of Contractor, hire, make any agreement with, or permit the employment in any operation providing Food Service, any individual who has been a management employee of Contractor within two (2) years following said employee terminates employment with Contractor or within two (2) years following termination of this Agreement. Client agrees that employees of the Contractor have acquired special knowledge, information, skills and contacts as a result of being employed with and trained by Contractor. If Client hires, makes any agreement with or permits employment of any such employee, in any operation providing food service within the restricted period of time, it is agreed by Client that Contractor shall suffer damages and Client shall pay Contractor a liquidated sum equal to two and one half times the annual compensation for each such person hired, to compensate Contractor for its employment investment expense. This provision shall survive the termination of the Agreement.
- 5.04 If Contractor incurs any costs, including legal fees, retroactive wages or damages as a result of any personnel action toward Client employees taken by the Client, or by the Contractor at the written direction of the Client, Client shall reimburse Contractor for such reasonable costs. This obligation shall survive the termination of this Agreement.
- 5.05 All food service personnel shall be subject to regulations and health examinations as Client may require and as established by applicable governmental requirements.
- 5.06 Non-food service personnel such as custodians, noon-duty aides, and office personnel shall be the responsibility of Client.
- 5.07 Contractor shall comply with Section 103 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).

SECTION 6. INSURANCE, INDEMNITY

6.01 Contractor shall maintain as a direct cost of operation, the following insurance coverage:

- (A) Worker's Compensation as required by law.

- (B) General Liability (including products liability) with limits of \$1,000,000 for injury or death to any one person, \$4,000,000 for injury or death of two or more persons in any one occurrence; and property damage with a limit of \$500,000 for each accident.
- (C) Automobile Liability 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 property damage with a limit of \$500,000 for each accident. At Client's request, Contractor shall obtain and deliver to Client certificates evidencing such insurance from its insurers.

6.02 Contractor shall save Client harmless from claims against Client arising out of production, preparation, sales and delivery of food products by contractor and injuries or deaths caused by Contractor's delivery vehicles, provided that Client shall give Contractor and its insurers the opportunity to defend, litigate and settle such claims and Client shall cooperate in such defense.

6.03 Client shall: (1) Hold Contractor harmless from claims for injury or death of persons or damage to property if such claims are covered by insurance (except for claims covered under Section 6.02) maintained by or for the benefit of Client; and (2) carry fire and extended coverage insurance on the Premises for not less than 80% of its full insurable value. It is understood and agreed, however, that in the event of claims as provided herein that Contractor's insurance shall be primary.

6.04 Each party shall hold the other harmless from and against and shall indemnify the other for any liability, loss, costs, expenses, or damages caused by reason 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 case same to be defended) at its own expense and shall pay and discharge any judgement 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 judgement which it may be required to pay shall be promptly reimbursed upon demand. Nothing herein is intended to nor shall it relieve either party from liability for its own act, omission, or negligence. Client 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 the Premises or the personal property, fixtures, and equipment located therein or 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 the Contractor and its employees and agents.

SECTION 7. LAWS, LICENSES, TAXES

7.01 Contractor shall comply with all State and Federal statutes, rules, and regulations applicable to its Food Service operation which now exist or which may be promulgated during the term of this Agreement or extension thereof, i.e., "Current Federal Regulations 7 CFR part 210, Sections 210.1 through 16 and Sections 210.21 through 23, 7 CFR 3015 and Attachment OMB Circular A-102, all of which are considered part of this contract" including the Federal and State of Michigan procurement standards which provide for maximum open and free competition.

7.02 The Client shall ensure applicable health certification(s) is maintained and that all State and local regulations are being met by the Contractor preparing or serving meals at Client's facilities. Contractor shall obtain necessary State or local health certification for any facility outside Client's school buildings in which it will prepare meals for use by Client and shall maintain said certification for the duration of this Agreement.

7.03 Client shall be responsible for collection and remittance of taxes assessed on the Food Service operation excluding Contractor's employee taxes, and city, state or federal income taxes. Client shall indemnify Contractor against any liability or assessment, including related interest and penalties, arising from such tax assessment and shall pay reasonable expenses, attorney's fees and court costs incurred in enforcement of the indemnity. This provision shall survive termination of the Agreement.

SECTION 8. ADDITIONAL SERVICES

8.01 Contractor shall conduct periodic food service evaluation surveys and shall require that a member of its resident management staff on Client's Premises be available for student/faculty/Contractor food committee meetings. Through periodic on-site visits, the Client shall monitor the food service operation to ensure the food service is in conformance with program regulations. The Client shall establish the advisory board composed of parents, teachers, and students to assist in menu planning.

8.02 Neither Contractor nor Client shall be responsible for failure to perform this Agreement when performance is prevented, directly or indirectly, by any event beyond the reasonable control of a party who acts with reasonable diligence.

8.03 Contractor shall provide such additional Food Services on the Premises as Client requests, such as banquets, parties, summer programs, etc., subject to Client and Contractor then agreeing on the nature, extent and cost of such additional services.

8.04 In the event of strike or other work stoppage, which interferes with the food service operation on the Premises, upon request, Contractor will take all reasonable steps to continue to provide Food Services, subject to reimbursement by Client for all direct costs of operation incurred by Contractor, including an allowance for its general administrative costs of \$2,500.00 per month and a management fee of \$.02 per meal for all meals served each month. Contractor shall submit to Client an invoice for such cost and fees following the end of the month.

SECTION 9. FINANCIAL ARRANGEMENTS; ACCOUNTING

9.01 The gross receipts from Contractor's food service operation on the Premises, shall be retained by Client, including all cash, credits, reimbursements and commodity payments.

9.02 Contractor shall provide the Food services on a basis whereby Contractor shall be paid a "Management Fee" (as defined in Section 9.03) and reimbursed for any costs of business (as defined in Section 9.04 and pre-approved by Client).

9.03 The term Management Fee shall mean the sum of \$.02 per meal for all meals served for both the summer and school year programs. In addition, Contractor shall charge Client an additional fee of \$.0015 for each 1% increase in participation provided that this additional fee does not diminish the guaranteed return.

9.04 The Costs of Business shall mean the sum of all costs, charges, and expenses incurred in connection with the Food Service operation including, but not limited to the the following items:

- (A) The cost of Contractor's direct labor for providing Food Services and Contractor's personnel including wages and overtime salaries (amount bid plus catering), bonuses (if any), and retirement plans; vacation, sickness and severance; group benefits such as health and pension, worker's compensation and unemployment compensation, payroll taxes, employee meals, travel expenses and other directly related labor costs.
- (B) The costs of food, beverages, merchandise, materials, expendables and supplies purchased by the Contractor for the Client's food service operation on the premises, excluding donated commodities, but including applicable taxes and delivery charges, less all applicable discounts and rebates that will be subtracted on the original invoice.
- (C) Costs of all other operating expenses incurred by the Contractor with respect to the Food Services under this Agreement including, but not limited to: costs of licenses, permits, maintenance and rental expenses, rent, security costs and cash losses or disappearances

incurred by Contractor on the Premises not involving Contractor's employees or agents; information systems, software, armored car services, promotions or proprietary materials, decorations, overnight delivery, if necessary, general liability insurance based on the average manual rates for such insurance in the geographic area of the Premises and 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 the Premises, sales and use taxes; and any other services related to the Food Service operation.

- (D) Contractor's administrative costs of \$25,000.00 per school year, payable in ten (10) equal payments of \$2,500.00 per month, and \$2,500.00 per month for July and August if the Client participates in the USDA Summer meals program
- (E) If during or after this Agreement any government determines any payment to Contractor is subject to a tax, then such tax plus any interest and penalties shall be a component of Costs of Business and be reimbursable by Client to Contractor.

9.05 The costs of all non-management hourly Food Service Employees employed by the Client shall be paid by the Client directly to the said employees per Client's ongoing Board of Education approval practices. The total payroll costs for the food service shall be charged to the food service program.

9.06 Contractor shall furnish Client with any required report and supporting records including detailed breakouts of all income and expenditure categories for submission in connection with governmental reimbursement programs. Contractor shall, at minimum, report claim information at the end of each month.

9.07 Contractor shall account to Client on a calendar month basis beginning on the first month of the school year with billing bimonthly. The billing cycle shall end on the 15th and last day of each month. Seven days following the end of each billing cycle, Contractor shall submit to Client an itemized monthly statement setting out the Costs of Business and Management Fee. Statements are payable within ten (10) days of receipt, 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. Before each contract year begins, Contractor shall invoice Client for estimated expenses of \$175,000.00. On the final invoice for the school year, Contractor shall give Client credit for the payment of estimated expenses.

9.08 Client, any State Agency administering the National School Lunch Program, the U.S. Department of Agriculture, and the U.S. General Accounting Office shall have the right to reasonable inspection of Contractor's records. Such records pertaining to Client's food service operation under this Agreement shall be made available upon request at Taher, Inc.'s offices during regular business hours. Contractor shall maintain such records for a five (5) year period or such other period of time as required by law. In instances where audit findings have not been resolved, the records must be retained beyond the five (5) year period until resolution of the issues raised by audit.

9.10 Contractor shall conduct its operations on the Premises in an efficient manner consistent with Client's policies and facilities, subject to applicable government regulations and available commodities.

9.11 Prior to the start of initial operations, Client and Contractor will take a beginning inventory of all usable food, supplies and donated commodities on the Premises. Contractor will utilize such inventory at a value determined by invoice cost.

9.12 Should Contract fail to deliver the itemized financial numbers as agreed upon, Contractor shall pay Client 100% of any shortfall for the first \$10,000.00 and share in any additional loss on a 50/50 basis up to a maximum of \$50,000.00.

SECTION 10. TERMS, RENEWAL, TERMINATION

10.01 This Agreement shall be for one (1) year beginning July 1, 2004 and ending June 30, 2005. It is renewable each year for two (2) additional one-year terms, unless at the option of either party, written notice of non-renewal is given to the other party at least sixty (60) days prior to the start of the school year. The General & Administrative and Management Fee amounts charged by the Contractor shall be negotiated annually and shall not be increased beyond the Consumer Price Index for All Urban Consumers, Food Away From Home.

10.02 Notwithstanding Section 10.01 either party may terminate this Agreement:

A. For Cause

If either party breaches a material provision of this Agreement, the non-breaching party may give the other party notice of such breach. If the breach is remedied within ten (10) days in the case of failure to make payment when due or in sixty (60) 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 the Agreement upon expiration of such remedy period. These rights of termination are not exclusive, but are in addition to any other rights available at law or in equity.

B. Without Cause

Either party may terminate the Agreement anytime upon sixty (60) days prior written notice to the other party of intention to terminate the Agreement.

10.03 Upon termination of this Agreement, Contractor shall surrender the Premises in the same condition as received by Contractor, reasonable wear and tear excepted.

SECTION 11. NOTICE

11.01 Any required notices shall be deemed sufficient if delivered in writing personally or by registered or certified United States mail to:

- a. Contractor: Taher, Inc.
c/o Bruce Taher, President
5770 Smetana Drive
Minnetonka, MN 55343

- b. Client: Jackson Public Schools
c/o William Hannon, Deputy Superintendent
Central Administration Office
522 Wildwood Avenue
Jackson, MI 49201

SECTION 12. RELATIONSHIP; CONFIDENTIALITY OF RECORDS

12.01 The relationship of Contractor to Client shall at all times be that of an independent contractor. Client is interested in the general nature and results and not the manner, method or means by which Contractor renders Food Services.

12.02 It is recognized Contractor 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 Contractor's way of conducting business. Client agrees to keep such information confidential and not copy, divulge or otherwise use it. Upon any termination of this Agreement (1) Client will cooperate in allowing Contractor its right to remove all such information from the Premises and (2) Client will turn over to Contractor all such information otherwise in the control or custody of Client.

12.03 Contractor agrees, pursuant to the Family Educational Rights and Privacy Act, 20U.S.C. 1232g, not to release any confidential information or records it receives relating to any of Clients students and further not to release nay information or records it receives relating to any of Client's employees.

SECTION 13. NON-DISCRIMINATION

13.01 Contractor agrees that it shall not unlawfully discriminate against any person in the performance of work under this Agreement because of race, religion, age, color, sex, national origin or ancestry, or disability unrelated to such person's ability to engage in the particular work. In all solicitations or advertisements for employees, Contractor shall include the phrase "Equal Opportunity Employer" or a similar phrase. Contractor further agrees to conduct its operations so as to adhere to Client's policy that there shall be no discrimination in the employment, assignment, training or promotion of personnel, the provision and maintenance of physical supplies and equipment and all other matters relating to the Food Services. Paragraph 1 through 7 of Section 60-1.4 of the Equal Opportunity Federal Contract Compliance Program is hereby incorporated by reference.

SECTION 14. MISCELLANEOUS

14.01 Failure of either party to insist upon strict adherence to any term of this Agreement or failure to enforce a particular provision shall not be a waiver or deprive any party the right thereafter to insist upon strict adherence to the Agreement.

14.02 Contractor certifies that neither it, nor its principals is presently ineligible or proposed for ineligibility, from participation in this transaction by any Federal department or agency.

14.03 This Agreement is the entire Agreement and supersedes any other prior Agreements or communications whether written or oral. No changes shall be effective unless in writing and signed by the party to be charged.

14.04 Client may terminate this Agreement for breach/neglect as determined by Client when considering such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by this Agreement, failure to provide required periodic information/statements, or failure to maintain quality of service as determined within this Agreement. The Client is the responsible authority without recourse to the Food and Consumer Service or Michigan State Board of Education for the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to the local, State, or Federal authority that has proper jurisdiction.

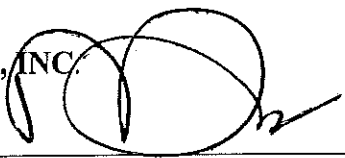
IN WITNESS WHEREOF, the parties execute this Agreement as of the date first above written.

JACKSON PUBLIC SCHOOLS

By William M. Harmon

Title Deputy Supt Date 9/21/04

TAHER, INC.

By 

Title CEO Date 9/10/04