**DINING SERVICES MANAGEMENT CONTRACT**

**Between**

**WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**

**and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**TABLE OF CONTENTS**

**ARTICLES PAGE**

1. DEFINITIONS 1

2. TERM, RENEWAL, AND TERMINATION 8

3. DINING SERVICES MANAGEMENT BY CONTRACTOR 13

4. HEALTH, SANITATION, AND CLEANLINESS 30

5. HUMAN RESOURCES 37

6. FINANCIAL MATTERS 46

7. FACILITIES AND EQUIPMENT 51

8. TECHNOLOGY 59

9. INVENTORIES 61

10. INSURANCE 62

11. COMPLIANCE WITH LAW AND DISTRICT POLICIES 66

12. INDEMNIFICATION 67

13. MISCELLANEOUS 68

14. COOPERATION 72

15. DISPUTE RESOLUTION BETWEEN THE PARTIES 72

16. NOTICES 75

17. APPLICABLE LAWS AND COURTS 75

18. REPRESENTATIONS AND WARRANTIES 76

19. CONFIDENTIAL INFORMATION AND PROTECTED MARKS 78

20. SURVIVABILITY 79

21. CONFLICT OF TERMS 79

**EXHIBITS**

1. West Valley-Mission Community College District’s REQUEST FOR PROPOSAL #11-2425 FOR DINING SERVICES MANAGEMENT dATED september 23, 2024, and the Questions and answers from the District dated \_\_\_\_\_\_\_\_\_\_\_\_, 2024
2. Contractor’s responseS to the District’s REQUEST FOR PROPOSAL (RFP #11-2425)
3. DINING SERVICES OPerating schedule
4. district’s contract management table of organization
5. Financial and Operational Responsibilities Summary
6. PERFORMANCE ASSURANCE scorecard
7. INITIAL INVENTORY OF district-OWNED furniture, fixtures, and EQUIPMENT
8. LIST OF CONDITIONS TO BE REMEDIED BY district
9. CAPITAL INVESTMENTs made by contractor AND AMORTIZATION SCHEDULE
10. AREAS IN THE FACILITIES TO BE CLEANED BY CONTRACTOR
11. DISTRICT’S INFORMATION TECHNOLOGY POLICY
12. DISTRICT’S FUNDING OF STUDENT MEAL PLANS

This Dining Services Management Contract (“Contract”) is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_\_\_ 2025 (the “Effective Date”) by and between West Valley-Mission Community College District, a California Community College District (hereinafter “District”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Contractor”), for the operation and management of District’s dining services (the “Services,” as more fully defined in Section 1.55 below), as defined herein. All references herein to the “Parties” will refer collectively to District and Contractor. Any reference to “Party” will refer singularly to either District or Contractor, as context indicates.

**RECITALS**

WHEREAS, District, through its Request for Proposal for Dining Services Management (RFP #11-2425), dated September 23, 2024 (“RFP”, attached hereto as Exhibit A), sought written proposals from experienced companies to provide the Services and manage certain facilities, programs, and operations related to the Services; and

WHEREAS, Contractor submitted to District a proposal with addendums for the performance of the Services (attached hereto as Exhibit B and incorporated by reference); and

WHEREAS, the Services are integral to the educational and social activities of District’s students, faculty, staff, and guests; and

 WHEREAS, District desires to retain Contractor, and Contractor desires to be retained to provide the Services and any related facilities, programs, and operations, beginning on the Commencement Date, so that District shall have the benefit of the experience, skill, and ability of Contractor to the mutual benefit of both District and Contractor, all upon the terms and conditions set forth in this Contract;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally and equitably to be bound, mutually agree as follows:

**ARTICLE 1**

**DEFINITIONS**

## “Accounting Period” means a calendar month.

* 1. “ADA” means the Americans with Disabilities Act of 1990, including any amendments.
	2. “Back-of-the-House” means the kitchens, storerooms, refrigerators and freezers, employee areas, management offices, and other areas under Contractor’s control that are not accessible to the public.
	3. “BOH FF&E” means District-owned Long-life Equipment and other Furniture, Fixtures, and Equipment (FF&E) in the Back-of-the-House to be placed under Contractor’s management for use in providing the Services.
	4. “Book Value” means the purchase price plus sales tax and freight charges, depreciated on a straight-line basis over the customary life of the equipment.
	5. “Business Day” means Monday through Friday of each week, except that a legal holiday recognized as such by the Government of the United States, the State of California, or District shall not be regarded as a Business Day.

## “Campus Representative” means, initially, the Vice President of Administration at each College, the College’s employee who is responsible for oversight of Contractor’s performance of Services at a College on District’s behalf. District may at its discretion at any time name a different Campus Representative by giving written notice of same to Contractor.

* 1. “Capital Investment and Amortization Schedule” means the schedule defined in Exhibit I attached hereto and incorporated herein, as updated from time to time by District and Contractor.

## “Cause” has the meaning set forth in Section 2.4 of this Contract.

* 1. “Collective Bargaining Agreement” or “CBA” means a labor agreement between Contractor and a duly recognized Union that is binding on Contractor and Union during the Term.
	2. “College” means either West Valley College located in Saratoga, California, or Mission College located in Santa Clara, California, as context indicates.
	3. “Commencement Date” is the date described in Section 2.1 of this Contract.
	4. “Commission” means the percentage return on Gross Revenues or revenue categories that Contractor will pay to District according to the terms and conditions of this Contract.
	5. “Completion Date” means the date upon which Contractor has no further obligations to manage the Facilities or Services under the terms and conditions of this Contract.
	6. “Confidential Information” means, but is not limited to: (i) personally identifiable student and employee information, nonpublic information, enrollment data, employee data, financial information, facilities information, business plans, trade secrets, innovations, proprietary systems, sales or customer data, contracts, leases, intentions, processes, business plans, and programs; (ii) any other information of a Party reasonably considered confidential by that Party; (iii) any other information of a Party that by its very nature should be construed by the other Party to be confidential; and (iv) all printed, physical, and electronic copies, and other tangible embodiments of any of the foregoing.
	7. “Contract” means this Dining Services Management Contract between West Valley-Mission Community College District and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to provide the Services.

* 1. “Contract Year” means the year ending June 30.
	2. “Contractor” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, organized and existing under the laws of the state of \_\_\_\_\_\_\_\_\_.
	3. “Contractor Marks” has the meaning described in Section 19.3.2.
	4. “Dining Services Manager” means an employee of Contractor who is approved by District to serve as District’s primary contact with respect to this Contract; who will manage the overall Services and Facilities; who will be the primary point of contact involving the management of Contractor’s or Subcontractor’s employees performing Services or working within the Facilities; and who will have authority to act on behalf of Contractor in connection with matters pertaining to this Contract.
	5. “District” means West Valley-Mission Community College District.
	6. “District Marks” has the meaning described in Section 19.3.1 of this Contract.
	7. “District Operating and Occupancy Expenses” means the aggregate of all costs and expenses paid or incurred by District to occupy and maintain the Facilities, including, but not limited to, the following:
		1. Utilities (as defined below).
		2. Wages, salaries, benefits, and employment insurance for District employees managing this Contract; maintaining, repairing, or renovating the Facilities; or providing other services required under this Contract.
		3. Consulting fees, fees paid to independent contractors hired by District in connection with its obligations to the Facilities, or other contractors or vendors hired by District to fulfill District’s obligations under this Contract.
		4. All other expenses identified as obligations of District in the Financial and Operational Responsibilities Summary attached hereto as Exhibit E.
	8. “District Representative” means, initially, the Executive Director of General Services, the District employee who is responsible for the overall management of this Contract on District’s behalf. District may at its discretion at any time name a different District Representative by giving written notice of same to Contractor.
	9. “Drug-Free Workplace” means Contractor’s adherence to District’s procedures and policies related to smoking, alcohol, and drug use on all District property, including the Facilities, that District may impose on Contractor from time to time, including, but not limited to, Contractor’s compliance with the Drug Free Environment and Drug Prevention, Alcoholic Beverages, and Smoking and the Use of E-cigarette Devices on Campus policies, including any amendments to or modifications of these policies as the District may make from time to time.
	10. "Effective Date” is the date described in the first paragraph on page 1 of this Contract.

## “Existing Dining Program Financial Obligations” means the financial investments made by Contractor as defined in Section 6.6.1.1 of this Contract.

* 1. “Existing Site Conditions” shall have the meaning described in Section 7.6.2 of this Contract.

* 1. “Extension Period” has the meaning described in Section 2.8 of this Contract.
	2. “Facilities” means District’s dining locations described in Section 3.3 of this Contract.
	3. “FF&E” means furniture, fixtures, and equipment.
	4. “Final Payment” means the final payment to Contractor by District for the Services.
	5. “FOH FF&E” means the tables, chairs, cabinetry, serving stations, salad bars, food and beverage coolers, beverage pouring equipment, and other FF&E used in the Front-of-the-House by customers utilizing the Services.
	6. “Food and Beverage Inventory” means all food and beverages intended for human consumption used in, or held in storage for use in, or if the context so dictates, required in connection with, the provision of the Services.
	7. “Force Majeure Event” means the occurrence of an event or circumstance beyond the reasonable control of either Party, provided that such Party is without fault in causing or contributing to the occurrence. Force Majeure Events will include, without limitation: (i) explosions, fires, floods, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God, (ii) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion, or sabotage, (iii) acts of federal, state, local, or foreign governmental authorities or courts, (iv) labor disputes, lockouts, strikes, or other industrial action, whether direct or indirect, and whether lawful or unlawful, (v) failures or fluctuations in electrical power or telecommunications service or equipment, (vi) acts of conservation imposed by law or regulation, or (vii) pandemic, epidemic, or other health emergency.
	8. “Front-of-the-House” means all areas of the Facilities under Contractor’s operational control that are accessible to the public, including entries, serveries, and indoor and outdoor seating areas.
	9. “GAAP” means the Generally Accepted Accounting Principles that are in effect during an Accounting Year in which an accounting question or issue related to the Contract is first identified.
	10. “Gross Revenues” means, with respect to the period in question, all moneys received by Contractor for the Services (including on-campus, off-campus, and Internet sales regardless of whether they originated or were fulfilled from the Facilities) rendered by Contractor, including, but not limited to, the entire sales price, whether for cash or otherwise, of all Food and Beverage Inventory sold and Services rendered, and all other receipts whatsoever of all business conducted in or from the Facilities whether by Contractor or any permissible Subcontractor, vendor, concessionaire, or licensee, as determined on the accrual method of accounting in accordance with GAAP. With respect to Gross Revenues received by any permissible Subcontractor, vendor, concessionaire, or licensee, Gross Revenues shall include only the portion of the Gross Revenues retained by or paid to Contractor and shall not include the portion of the Gross Revenues paid to or retained by the permissible Subcontractor, vendor, concessionaire, or licensee. Each sale upon installment or credit will be treated as a sale for the full price in the month during which such sale was made, and there will be no deduction from Gross Revenues for uncollected or uncollectible credit accounts. The following will not be included in Gross Revenues:
		1. Meal plan declining balance funds or voluntary declining balance funds not redeemed or utilized by the plan holders**.**
		2. Receipts from sales of meals to Contractor’s employees, representatives, or guests or the employees, representatives, or guests of any of its permissible and approved Subcontractors, vendors, concessionaires, agents, or licensees.
		3. Any gratuities or service charges made, collected, and turned over to Contractor’s employees or representatives or the employees or representatives of any of its permissible and approved Subcontractors, vendors, concessionaires, agents, or licensees.
		4. The proceeds of the sale of any fixtures, furniture, or equipment after use thereof in the conduct of Contractor’s business in the Facilities.
		5. Proceeds from the sale or liquidation of any inventory that is not sold at retail price.
		6. Any processing fee paid in connection with sales by credit or bank cards, including, but not limited to, campus debit card fees.
		7. Taxes collected by Contractor, or any Subcontractor of Contractor, as required by governmental authority, which are separately stated in sales records.
		8. Discounted sales to employees of the Parties or District students or guests on terms requested by District or mutually agreed upon by the Parties. Discounted sales do not include sales of value meals described in Section 3.6.3.2.
		9. Food donations or sales at-cost approved by District.
		10. Pass-through income defined as sales at-cost to groups affiliated with District.
		11. Sale proceeds for any sales that are refunded.
		12. Sales of merchandise for which District receives no Commission from Contractor as mutually agreed to in writing by the Parties.
		13. The amount of all discounts, rebates, allowances, or incentives from any supplier that is received by Contractor or by an affiliate or assignee of Contractor or from which Contractor benefits.
	11. “Hazardous Material” means any item or agent (biological, chemical, radiological, and/or physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.
	12. “Improvements” means any permanent or fixed alteration to, rebuilding of, or renovation of the Facilities that is paid for by Contractor, the cost of which generally is capitalized under GAAP and is not charged to property operation and maintenance.
	13. “Independent Accountants” means any of the reputable and nationally or regionally recognized certified public accounting firms in the United States, as may be mutually agreed upon by the Parties.
	14. “Key Performance Indicators” or “KPIs” have the meaning described in Section 3.17.3 of this Contract.
	15. “Long-life Equipment” means equipment with an expected serviceable life of five (5) years or more.
	16. “New Capital Investments” means the financial investments made by Contractor in the Facilities as defined in Section 6.6.1.2 of this Contract.
	17. “Operating and Consumable Supplies” means consumable items other than Food and Beverage Inventory used in, or held in storage for use in, or if the context so dictates, required in connection with the Services, including, but not limited to, wares, merchandise, other consumable goods used or sold in or from the Facilities, cleaning materials, office supplies, and other similar items.
	18. “Operating Schedule” means initially the Facilities’ hours of operation described in Exhibit C, attached hereto and incorporated herein.
	19. "Other F/B Agreements” has the meaning described in Section 3.8 of this Contract.
	20. “Parties” mean the signatories of this Contract, namely the District and Contractor.
	21. “POS System” means point-of-sale system, which is the hardware and software needed to process declining balance, credit/debit, and cash sales transactions at the Facilities, including cash registers, scales, scanners, receipt printers, and other point-of-sale equipment.
	22. “Premises” mean all land and facilities owned, leased, or otherwise controlled by District.
	23. “Response” means Contractor’s responses to the RFP (as amended and supplemented), all of which is attached hereto as Exhibit B.
	24. “RFP” means West Valley-Mission Community College District’s Request for Proposal #11-2425 that was issued by District on September 23, 2024, as a solicitation of qualified bidders to provide the Services, and the questions and answers from District dated \_\_\_\_\_\_\_\_\_\_\_\_, 2025 (hereto attached as Exhibit A).
	25. “Services” means the preparation, serving, or sale of food, beverages, and related merchandise at District’s Facilities or other mutually agreeable locations, including retail, catering, conference, camp, and special event services, and any other dining-related programs or services allowed for under this Contract.
	26. “Short-life Equipment” means equipment that has an expected serviceable life of less than five (5) years (excluding Smallwares).
	27. “Smallwares” means glassware, flatware, dinnerware, pots and pans, trays, tabletop items, catering and bar supplies, food preparation utensils and tools, storage supplies, service items, and other small equipment other than Short-Life Equipment.
	28. “Subcontractor” means a person or entity that has a direct agreement with Contractor to perform any of Contractor’s obligations pursuant to this Contract with the prior, written approval of District.

## “Term” has the meaning set forth in Section 2.1 of the Contract.

* 1. “Termination Notice Date” means the date upon which either Party receives written notification via the required procedures described in Section 16.1 of this Contract of the terminating Party’s decision to terminate this Contract effective on the Completion Date.
	2. “Union” means any collective bargaining unit that is legally authorized to represent Contractor’s employees performing Services under this Contract.
	3. “Utilities” means electricity, gas, water, sewer, heating, ventilation, air conditioning, landline telephones, recycling, trash removal, and data line charges.
	4. “Work Material” means all specifications, plans, computations, data, publications, statements, accounts, reports, studies, and other materials prepared by Contractor exclusively for District.

**ARTICLE 2**

**TERM, RENEWAL, AND TERMINATION**

* 1. Term: The Term of this Contract shall commence on the Effective Date and continue uninterrupted until May 31, 2030, unless otherwise terminated earlier or extended as allowed for in this Contract. Contractor shall begin providing Services and managing the Facilities as of June 1, 2025 (“Commencement Date”) unless a different date is mutually agreed upon by the Parties.
	2. Renewal: This Contract will have no renewal options.
	3. Termination without Cause:
		1. By District:
			1. Termination for Any Reason or No Reason: This Contract may be terminated by District without cause by giving Contractor written notice of the intention to terminate on a specific date no less than one hundred eighty (180) calendar days from the Termination Notice Date, which is the date the notice to terminate is received by the Contractor.
			2. Loss of Funding/Resources: District may terminate this Contract with twenty-one (21) calendar days’ notice if the District loses any funding or other resources that the District deems necessary to continue the District’s performance under this Contract.
		2. By Contractor: As set forth below, this Contract may be terminated by Contractor without cause by giving District written notice of the intention to terminate on a specific date no less than one hundred eighty (180) calendar days from the Termination Notice Date, which is the date the notice to terminate is received by District. If Contractor chooses to terminate without cause, Contractor shall pay District a Termination Fee (“Termination Fee”) equal to amounts stipulated below:
		+ Termination during Contract Years 1 through 3: Not allowed.
		+ Termination during Contract Year 4: $200,000.00.
		+ Termination during Contract Year 5: $100,000.00.

The Termination Fee will be paid within sixty (60) calendar days of the Completion Date.

* 1. Termination for Cause:
		1. Termination by Either Party for Cause (with right to cure): Either Party shall have the right to terminate this Contract for Cause, which is defined as the breach of a material term or condition of this Contract, Force Majeure Events excepted, by giving written notice specifying such breach to the breaching Party, provided the breaching Party then fails to cure such material breach within ten (10) Business Days of the receipt of said notice. If such material breach is of a nature that it cannot be cured within ten (10) Business Days and the breaching Party has taken sufficient steps to cure such material breach using commercially reasonable efforts, good faith, and persistent diligence, then so long as the breaching Party continues those steps and other reasonable steps that may be necessary, the breaching Party will have additional time reasonably needed to complete the cure. Notwithstanding the foregoing and any other provision to the contrary in this Contract, at no time will the time to cure exceed thirty (30) Business Days. This Section 2.4.1 relates only to independent causes of material breach and is not intended to provide for a cure period for any of the causes of material breach described in Sections 2.4.2 and 2.4.3 below.
		2. Immediate Termination by Either Party for Cause (without right to cure): The Parties agree that the following will be deemed to provide grounds for immediate termination for Cause of this Contract by the non-breaching Party giving written notice of same to the breaching Party, without opportunity to cure:
			1. The bankruptcy, insolvency, or cessation of operations of the breaching Party; or any voluntary or involuntary petitions filed for bankruptcy, dissolution, liquidation or winding-up of the affairs of the breaching Party; or the breaching Party makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act; or a receiver or trustee in bankruptcy is appointed for all or a portion of the breaching Party’s property.
			2. Failure by the breaching Party to maintain all insurances, certifications, licenses, and permits applicable to the Services, which are required by applicable law to operate the Services legally without interruption.
			3. Failure by a Party to pay any required taxes applicable to the Services, which are required by applicable law or this Contract.
			4. Failure by a Party to make any payments required to be made hereunder to the Party not in default.
			5. Failure to comply with all applicable federal, state, and local laws and regulations.
		3. Termination by District for Cause: In addition to the foregoing, District reserves the right to terminate this Contract immediately upon written notice to Contractor if:
			1. Contractor enters into any agreement with a third party in violation of this Contract.
			2. Contractor fails to maintain top health, safety, and sanitation inspection ratings as required by applicable law or this Contract.
			3. Contractor’s egregious breach, including, but not limited to, fraud or theft.
			4. District, in its sole but reasonable discretion, determines that any action, inaction, error, or omission of Contractor or Contractor’s employees unrelated to the Contractor’s performance under this Contract caused or is causing District to suffer material adverse publicity or material negative impact to its reputation or good standing.
	2. Conciliation of Performance Issues: If District reasonably determines, after comparing Contractor’s performance to the agreed-upon specifications, that Contractor’s Services are substandard, District may, at its option, prior to issuing any notice of default or breach, submit documentation of the substandard performance to Contractor for its review and corrective action. Upon the request of District, a meeting may be called between executives of the Parties where instances of Contractor’s alleged substandard performance shall be discussed and a plan for corrective action shall be developed by the Parties and promptly implemented by Contractor. Notwithstanding anything to the contrary in this Contract, District reserves the right to terminate this Contract immediately if: (i) District and Contractor cannot agree on a corrective action plan, (ii) District, in its sole but reasonable discretion, determines that Contractor’s implementation of the corrective plan is substandard; or (iii) District, in its sole but reasonable discretion, determines that Contractor has failed to implement the corrective plan in a timely and persistent manner. District is entitled (but not obligated) to cure any breach or default of Contractor and has the right to offset against all amounts due to Contractor any and all reasonable expenses incurred by District in connection with curative actions.
	3. Rights Prior to Termination: Termination of this Contract will not affect any right of either Party that accrued prior to the effective date of such termination.
	4. Reimbursement for Depreciated Value of Contractor Improvements: In the event of early termination of this Contract by either Party for any reason, District’s obligations regarding reimbursement to Contractor of unamortized portions of New Capital Investments shall be governed by Section 6.6.1 of this Contract.
	5. Continued Operation after Termination: If this Contract is terminated as allowed for in Sections 2.3 and 2.4.3, Contractor agrees, at District’s option, to continue provision of the Services in accordance with the terms and conditions of this Contract from the Termination Notice Date until the date a replacement contractor (or District itself) is able to commence performance of the Services (“Extension Period”), provided, however, that this Extension Period will not exceed two hundred and seventy (270) calendar days from Termination Notice Date. University will notify Contractor within ninety (90) calendar days following the Termination Notice Date if it intends to exercise this option and for how long. Contractor’s obligation to provide the Services during the Extension Period is subject to the condition that District is not in material breach of this Contract during the Extension Period.
	6. Contract Expiration: Notwithstanding the foregoing, in the event this Contract expires, and Contractor continues to provide Services, this Contract will continue in force in accordance with the existing terms and conditions in effect as of the expiration date until i) amended by mutual written agreement of the Parties or ii) terminated by either Party upon thirty (30) calendar days’ written notice. This thirty (30) calendar day notice applies only to this circumstance where Contractor continues to provide Services after this Contract expires.
	7. Smooth Transition: Upon termination or expiration of this Contract, Contractor agrees to assist with an orderly transition of the Facilities and Services to District or to a replacement Services provider chosen by District, or District itself. Contractor agrees to:
		1. Provide sufficiently experienced employees during the transition period to ensure that the Services are maintained at the levels required under this Contract.
		2. Help District develop a transition plan.
		3. Train replacement personnel to use any non-proprietary equipment, software, or process that is to be transferred.
		4. Catalog and establish value of Services-related inventory items.
		5. Explain operating procedures.
		6. Provide at no cost to District or any replacement contractor all other assistance as may be reasonably requested during the period from the Termination Notice Date to the Completion Date.
	8. Close-out: By no later than ten (10) Business Days prior to the Completion Date, District and Contractor shall jointly inspect the Facilities. Unless otherwise approved in advance by District, Contractor shall promptly and at its own cost, but in no event later than three (3) Business Days after the Completion Date: (i) remove all Contractor-owned and Subcontractor-owned Food and Beverage Inventory, Long-life Equipment, Short-life Equipment, Smallwares, and Operating and Consumable Supplies not purchased by District or a replacement contractor, (ii) surrender all FF&E provided by District in as good a condition as on the Commencement Date, except for ordinary wear and tear and loss or damage by fire and other casualty not caused by Contractor’s negligence or willful misconduct, acts of God, and theft by persons other than the employees of Contractor without negligence or misconduct on the part of Contractor or Contractor’s employees, and (iii) surrender to District or replacement contractor all Food and Beverage Inventory, Short-life Equipment, Long-life Equipment, and Operating and Consumable Supplies owned by District or purchased from Contractor. Shortages from District-owned or provided FF&E, Long-life Equipment, and Short-life Equipment assigned to Contractor under this Contract will be replaced within five (5) Business Days of the Completion Date at Contractor’s sole expense with any replacements being of comparable quality to the missing, lost, or damaged items. If Contractor should fail to remove such property as required, District may at its option:
* Consider such property abandoned and do with it as District so chooses.
* Move such property into storage and charge Contractor for the costs and expenses of such moving and storage and Contractor shall promptly pay such costs and expenses.
* Assign such property to the replacement contractor or District itself, which may use it for whatever purpose it chooses.
	1. Contractor Losses: Neither District nor its replacement contractor shall have any liability to Contractor, Contractor’s employees, or any Subcontractor for any of Contractor’s, Contractor’s employees’, or any Subcontractor’s property left, lost, or damaged during or after its disposition as allowed for under this Contract.
	2. Purchase of Equipment and Supplies: Unless mutually agreed to otherwise by the Parties, neither District nor its replacement contractor has any obligation to reimburse, purchase, or otherwise compensate Contractor for any Food and Beverage Inventory, Short-life Equipment, Long-life Equipment, Smallwares, or Operating and Consumable Supplies owned by Contractor and used to provide the Services. District or its replacement contractor may, upon mutual agreement of the Parties, purchase any of the non-perishable Food and Beverage Inventory, Short-life Equipment, Long-life Equipment, Smallwares, or Operating and Consumable Supplies owned by Contractor and used to provide the Services at the following amounts: (i) Short-life Equipment at Book Value; (ii) Long-life Equipment at Book Value; (iii) Operating and Consumable Supplies at the original purchase price plus sales tax and freight charges, net of any Contractor rebates and discounts; (iv) Smallwares at the original purchase price plus sales tax and freight charges; and (v) non-perishable Food and Beverage Inventory at the original price plus sales tax and freight charges, net of any Contractor rebates and discounts.
	3. Commitments Beyond the Effective Date of Termination: Contractor shall not, without District’s prior written permission, enter into any commitment or agreement with a third party for District-specific services, supplies, or equipment that extend beyond the Term of this Contract. In the event Contractor does, without District’s prior written permission, enter into a commitment or agreement with a third party for District-specific services, supplies, or equipment that extend beyond the Term of this Contract, Contractor shall remain solely responsible for any-and-all commitments and obligations under such third-party agreement and shall defend, indemnify, and hold District harmless from any claims made against District arising under such third-party contracts.
	4. Written Notice of Termination: Termination of this Contract for any reason will be effective only as set forth in the written notice from the terminating Party in accordance with the notice provisions described in Section 16.1 of this Contract.
	5. The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights or remedies available to either Party at law or in equity.

**ARTICLE 3**

**DINING SERVICES MANAGEMENT BY CONTRACTOR**

* 1. Contractor Compliance: District expects Contractor to provide the Services in compliance with the terms and conditions described in this Contract and Contractor’s Response described in Exhibit B, the terms of Contractor’s Response being incorporated herein and made a part hereof by this reference; provided, however, that in the event of a discrepancy or inconsistency between Exhibit B and this Contract and its other Exhibits, this Contract and its other Exhibits shall take priority and be controlling. The Parties understand and agree that Contractor, in the performance of its obligations under this Contract, is subject to the control and direction of District as to the designation of tasks to be performed and the results to be accomplished by the Services agreed upon to be rendered and performed under this Contract, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use District’s Facilities and FF&E in the performance of this Contract, such use shall be at Contractor’s sole discretion based on Contractor’s determination that such use will promote Contractor’s efficiency and effectiveness.
	2. Operating Schedule: To meet the needs and demands of District, Contractor shall operate the Facilities and Services substantially in accordance with the Operating Schedule described in Exhibit C. Contractor and District agree to evaluate the initial Operating Schedule prior to the Commencement Date and all future Operating Schedules at the end of the spring semester of each Contract Year to determine if operating hours should be adjusted for the following Contract Year. The Parties will mutually agree upon changes to the operating hours and Contractor will republish an updated Operating Schedule by August 1 of each Contract Year. Notwithstanding the foregoing, the Operating Schedule may be subject to change from time to time by District. In the event of a unilateral material change by District to the Operating Schedule that affects Contractor’s costs to provide the Services, Contractor shall provide to District a written estimate of such costs or savings. Contractor shall be compensated for any additional costs incurred as the result of such change and shall give District a credit for any savings. Such compensation or credit will be determined by mutual agreement of the Parties. In the event that the Parties cannot mutually agree upon such compensation or credit, they will proceed in accordance with the dispute resolution proceedings set forth in Article 15. Contractor will make no changes to the Operating Schedule without the prior written approval of the Campus Representative at the College where changes may occur. Each Party will notify the other Party immediately of any Facilities closings or delays caused by emergencies, including those related to Force Majeure Events.
	3. Exclusive Rights: Except for District’s rights reserved under this Contract, Contractor shall have the exclusive right to provide Services at or out of the following Facilities:
	+ West Valley campus:
	+ Campus Center Café currently operated as WM Cafe
	+ Coffee Bar in the Campus Center currently operated by Drip Coffee
	+ Learning Resource Center (library) coffee bar (opening in spring 2026)
* Mission campus:
	+ Saints Café in the Student Engagement Center currently operated as WM Cafe
	+ Coffee Bar in the Student Engagement Center currently operated by KJ’s Cafe
	+ Coffee Bar in the Gilmor Center currently operated by KJ’s Café

Except as otherwise noted herein, this right includes Contractor’s exclusive access to and use of the kitchen areas, storerooms, food preparation and cooking equipment, dish rooms, and offices located in the areas described above and assigned to Contractor as of the Effective Date of the Contract.

3.4 Non-exclusivity: Contractor accepts that foodservice operations in all District areas not expressly listed above in Section 3.3 above are non-exclusive.

* 1. Right of First Refusal: In the event that District desires that additional Services be provided at new or existing District locations in addition to those identified in this Contract, District shall provide notice to Contractor of same and Contractor shall have the right of first refusal to offer and provide such services to District on terms as shall be mutually agreeable to the Parties. Contractor will have thirty (30) calendar days to provide District with its answer once it receives the notice from District unless the Parties mutually agree upon a longer review period.
	2. Dining Services: Contractor shall provide District and its guests with the full range of Services described in this Contract. The selection and pricing of Food and Beverage Inventory will appeal to a broad range of customer preferences and budgets. District reserves the right to recommend items to be sold from the Facilities and to require the removal of items from sale that District reasonably considers unsuitable.
		1. Branded Programs: If mutually agreed upon in writing by the Parties, Contractor may provide national, regional, local, or corporate branded programs as part of the Services. Contractor shall deliver to District documented proof, reasonably satisfactory to District, of valid licensing agreements that allow Contractor or Subcontractor(s) to operate such brands within the Facilities, with all documentation delivered to the District Representative prior to the installation of such brands on campus.
		2. Retail Pricing: Contractor shall offer all food and beverage items à la carte, except for value or special meals. Contractor and District shall work collaboratively to establish prices and portions for food, beverages, and other items offered for sale from the Facilities. Such prices and portions should be identical at the Colleges and will be based upon local non-Contractor peer institutional pricing and portioning, local market basket surveys, local economic conditions, adjustments to consumer price indices for food, and increases in Contractor’s operating costs. Contractor shall provide District with its proposed pricing and portions to take effect in the fall term for each College by the preceding July 1st. Contractor and District shall seek to mutually agree upon the potential effect of such pricing and portioning on Contractor’s financial performance and the Parties may agree to modify the financial arrangements of this Contract in consideration thereof. Notwithstanding anything to the contrary contained in this Contract, District has final approval on all pricing and portioning.
		3. Retail Dining:
			1. Meal Plan Program:
				1. District Funding of Meal Plans: District at its expense will fund a declining balance meal plan program for students in the amounts and on the schedule described in Exhibit L of this Contract. These District-provided meal plan funds can only be used by students at on-campus dining locations and will be added to eligible students’ accounts on a schedule determined by the District. The District and Contractor will meet in May of each Contract Year to determine the meal plan program requirements for the following Contract Year, including the contribution to be provided by the District. The District has final authority to make all decisions regarding the meal plan program.
				2. Plan Management: The District shall be responsible for managing all meal plans and declining balance programs offered by Contractor from the Facilities. Subject to Article 8 of this Contract, Contractor, at its expense, shall by the Commencement Date supply District with the POS System needed to effectively perform transactions related to the Services. Contractor, at its expense, shall be responsible for all maintenance and any replacements, additions, or upgrades to the POS System, except for maintenance or replacements necessary due to District’s abuse, loss, or negligence. Contractor shall retain ownership of the POS System. Contractor will be responsible for processing customer transactions related to the Services and managing menu item and pricing modifications. The District shall be responsible for the identification card program, including the preparation of a District-issued ID card for each faculty member, staff member, and student, that allows for processing meal plan and declining balance transactions.
				3. Meal Plan Invoicing: Contractor will invoice District weekly for all meal plan declining balance dollars used during the preceding week in accordance with Section 6.8. Non-meal plan retail transactions will be billed separately from the meal plan swipes. All unused meal plan balances at the end of each semester will be captured by District prior to the start of the next semester.
				4. Meal Plan Participation Requirements: The financial arrangements of this Contract have been negotiated between the Parties upon the condition that, as of the Effective Date and for the first year of the Contract, District will fund eligible students’ meal plans at the levels described in Exhibit L of this Contract.
		4. Non-Meal Plan Retail Sales: Contractor shall offer all food and beverage items to non-meal plan participants, including faculty, staff, District visitors, and other students, at the same prices charged to meal plan participants. Contractor shall treat all such non-meal plan declining balance sales as retail purchases and track them in a separate line item on its sales reports.
			1. Voluntary Meal Plans: District encourages Contractor to develop and sell voluntary or enhanced meal plans to District students, faculty, and staff. The plans to be offered by Contractor during the first Contract Year are described in Exhibit L. The accounting procedures used by the Parties to manage the voluntary plans will be the same as those used by them for the required plans.
			2. Value Meals: As part of the Services, Contractor shall offer a reasonable number of value meals, combos, meal deals, weekly specials, or other types of discounted menu items. Contractor shall submit a schedule of monthly value meals to be offered by July 1 of each Contract Year as part of the annual business planning process. The value meal program will be evaluated and adjusted to meet students’ and other patrons’ food preferences at the various Facilities.
			3. Mobile Ordering and Delivery: Contractor shall provide mobile ordering and delivery services to drive sales and improve customer convenience as mutually agreed to by the Parties prior to their implementation. The Parties agree that Contractor shall have the exclusive right to provide mobile ordering services that support Services being performed under this Contract.
			4. Food Trucks and Other Portable Service Points: The Parties will, prior to any installations, mutually agree on how food trucks and/or other portable service points will be utilized on Premises to provide the Services, if at all.
			5. Venues Owned or Operated by District: Unless expressly prohibited by this Contract, District reserves the right to operate, either on its own or through a third party, foodservice venues in buildings other than the Facilities or on land owned, leased, or controlled by District, including food services provided in conjunction with the District’s academic programs.
		5. Catering: Contractor shall provide catering services as set forth below:
			1. Non-exclusivity: Notwithstanding the provisions of Section 3.3, District reserves the right to employ a vendor other than Contractor to provide catering services at any campus location. Catering services by vendors other than Contractor shall be conducted in such a manner so as not to interfere materially with Contractor’s performance of Services at or from the Facilities. Contractor does not have any obligation to provide food, beverages, supplies, equipment, or assistance to outside catering vendors, nor does the Contractor have any obligation to provide access to BOH Facilities and FF&E.
			2. Use of Facilities: During hours outside of scheduled times when Contractor is providing Services in the Facilities, or during scheduled times to accommodate special events, District reserves the right to use Front-of-the-House areas (except the serveries) of the Facilities for District purposes, provided that District does not unreasonably interfere with Contractor’s operations and restores such areas to a clean and serviceable condition upon completion of its events.
			3. Catering Equipment and Supplies: Unless expressly agreed upon otherwise in this Contract by the Parties, Contractor shall provide all equipment, supplies (including linens), and vehicles needed to perform its catering responsibilities required pursuant to this Contract. By the Commencement Date, Contractor shall install at its own expense a catering software system for managing catering operations. Contractor shall be responsible at its sole expense for maintaining the catering software system throughout the Term.
			4. Catering Tiers and Pricing: Contractor shall provide catering tiers for customer review and selection. The tiers and tier pricing should be identical at the Colleges and will be reflected in catering guides to be provided by Contractor, both via Contractor’s dining website and its written brochures. Contractor shall provide separate catering guides for campus departments, students, and outside users. The student guide will reflect economical, cost-effective options for students. Contractor will, whenever practical, provide age appropriate or other specific items requested by camp and conference coordinators.
			5. Clean Up: Contractor shall promptly remove all catering service items, including equipment and leftover food, after the completion of a catered event. Further, Contractor acknowledges that under no circumstances will food items be left unattended for more than two (2) hours. It is the responsibility of Contractor’s catering services staff to arrange for the pickup and/or disposal of Contractor-provided catered items. Contractor does not have any responsibility for cleaning up after outside caterers.
			6. Catering Guide: Within thirty (30) calendar days prior to the Commencement Date, Contractor shall submit a catering guide, including selections, procedures, and pricing for each College, to each Campus Representative for approval. For each Contract Year thereafter, Contractor shall submit an updated catering guide for each College by July 1 as part of the annual business planning process. Once approved, the guide will take effect by August 15 and be available to customers via each College’s dining website or in a separate digital or printed document.
			7. Catering to Non-District Customers: Contractor may provide catering to non-District customers at District-owned or controlled locations, provided Contractor books all reservations through the appropriate College’s reservation process, each such reservation receives prior approval from the appropriate College official, all College facility usage policies are followed, and all proceeds from such activities are included in Gross Revenues. Contractor may also provide catering at District-affiliated off-campus events, provided that on-campus Services are in no way negatively impacted and all proceeds from such activities are included in Gross Revenues. Contractor shall not utilize the Facilities, Operating and Consumable Supplies, Long-life Equipment, Short-life Equipment, Smallwares, or Food and Beverage Inventory stored within the Facilities for non-District off-campus events or other catering services not related to the District.
			8. Collection of Catering Charges: Contractor shall be responsible for invoicing and collecting all charges related to its catering activities in a timely manner. Contractor agrees to send invoices for District’s catered events to District via e-mail at invoice@wvm.edu within five (5) Business Days following completion of the event. Contractor shall follow all District procedures for collection of catering invoices. Contractor shall invoice all non-District organizations directly and collect outstanding balances accordingly. Sales to non-District organizations will be recorded as outside catering sales.
			9. Catering Staff: Contractor shall maintain on campus an experienced, well-skilled staff that is capable of planning and organizing the catering events commonly occurring at District, and, if needed, have additional resources at its disposal to assist with major or specialized functions that District may choose to hold.
			10. Catering Vehicles: Contractor shall provide, at its own expense, all vehicles needed for performance of the Services, including catering. Contractor shall maintain all such vehicles in good condition, keeping them clean, licensed, and inspected as required by applicable law. Contractor shall adhere to, and shall cause its employees, agents, and representatives to adhere to District’s parking and traffic regulations. Contractor’s vehicles used to perform the Services must be clearly identified as Contractor’s vehicles. Contractor’s employees, agents, and representatives who drive Contractor’s catering vehicles must have a valid driver’s license to operate a motor vehicle in the state of California.
			11. Event Coordination: Contractor shall coordinate with District’s event management, facilities, and security managers to ensure that outdoor and indoor events have the appropriate engineering, electrical, security, and sanitation plans in place prior to their start.
			12. Client Satisfaction: Following each catering event, Contractor shall promptly survey the event coordinator or manager to evaluate how Contractor performed its catering responsibilities. Contractor agrees to share all survey results with District. In response to the feedback received, the Parties shall meet at least annually to review Contractor’s aggregated survey feedback and identify and implement new initiatives that support continuous improvement in Contractor’s catering program.
			13. Existing Catering Obligations: Contractor will honor all catering obligations made by WM Café (“WMC”) prior to the Effective Date that will occur on or beyond the Commencement Date at the price, quantities, and quality negotiated by WMC unless mutually agreed to otherwise by the Parties. On and after the Effective Date, District will consult with Contractor before allowing any catering event to be booked by WMC that would occur on or after the Commencement Date.
		6. Vending Services: Contractor has no machine vending responsibilities under this Contract.
		7. Client Concessions: Contractor has no concessions responsibilities under this Contract unless specifically agreed to otherwise by the Parties.
		8. Alcoholic Beverages: Contractor may not serve alcohol under this Contract except by special arrangement with and approval from the appropriate Campus Representative and only provided all campus policies and procedures related to alcohol use at the College where the alcohol will be served are followed. District is committed to safe and responsible behavior related to alcoholic beverage service.
			1. Certifications: Contractor shall only use bar servers for District events that are educated in TIPS, ServSafe Alcohol, or comparable procedures and have a valid certification from such a program.
			2. Risk Management: When Contractor is responsible for serving alcoholic beverages, it will ensure that alcohol is only served:
				+ as part of its Services responsibilities,
				+ through legally acceptable means, and
				+ in compliance with all applicable laws and District policies.
		9. Menus:
			1. Menu Design: Menus at each dining location will be designed to appeal to a broad range of District customers to meet both desired and recommended dietary interests. Local and ethnic recipes should be included in menu development to reflect the demographics and cultural preferences of customers. Every commercially reasonable effort should be made to include student organizations and/or focus groups when developing menus. Nutrition and allergen information, variety, cost, and visual appeal are also key factors. No later than thirty (30) calendar days prior to the Commencement Date, Contractor shall submit all dining menus, complete with price and portion lists, for each food outlet to the appropriate Campus Representative for approval. Subject to Sections 3.6.2 and 3.6.3, above, once approved by the Campus Representative, further price or portion changes at a College will not be allowed without the prior written approval of the Campus Representative. Once changes are approved, Contractor shall, before initiating the new prices or portions, update and prominently post all menus in the Facilities’ dining areas, on the Services’ website, and in other allowed campus communication mediums.
			2. Production Techniques: Contractor will prepare flavorful and high-quality meals from scratch in small batches, using locally sourced products whenever possible.
			3. Ala Carte Items: All menu items at all Facilities will be available ala carte, unless packaged as value meals or other special combinations.
			4. Food Sources and Origins: To the extent practical, Contractor agrees to partner with qualified local and regional growers and produce distributors to encourage farm-to-fork dining. Contractor shall take commercially reasonable efforts to provide the freshest local vegetables and fruits available.
			5. Food Specifications: Unless otherwise specified in writing by District, the following minimum food specifications are established and will be maintained by Contractor at all times throughout this Contract:
				+ Beef and Veal: USDA Choice or better.
				+ Ground beef: USDA Standard or better ground beef and beef patties with 100% all beef and fat content not to exceed 15%. (Contractor may serve "blended" burgers containing mushrooms, lentils, beans, etc., if part of its sustainability initiatives.)
				+ Pork and Lamb: USDA Grade “A" (#1).
				+ Poultry: USDA Grade “A”.
				+ Fish and/or Seafood: USDA Grade “A”.
				+ Eggs: USDA Grade “A” (at least large).
				+ Dairy Products: USDA Grade “A”.
				+ Frozen Foods: USDA Grade “A” Fancy.
				+ Fresh Fruits and Vegetables: USDA #1 Quality. (Blemished or #2 produce may be substituted if part of Contractor’s sustainability efforts.)
				+ Canned Goods: USDA Grade “A” Fancy.
				+ Delicatessen / Lunch Meats: Boar’s Head or comparable.
				+ Cheeses: Cheeses will be all natural, non-processed when served as a prime ingredient in an entrée or sandwich. American processed cheese may also be served as an additional sandwich ingredient.
				+ Frankfurters/hot dogs: Maximum eight (8) per pound, all beef, no filler. Turkey franks may be used as an alternate to satisfy certain health and ethnic diet requirements.

District reserves the right to review Contractor’s invoices to ensure that food specifications are being met. Any deviation from specifications must be approved in advance in writing by the District Representative. District shall have free access during normal business hours to any records pertaining to food specifications, including, but not limited to, recipes, production methods, product specifications, menus, and foods issued by each service unit to determine that specifications were met, it being understood by Contractor that District may need access to Contractor’s records containing trade secrets or proprietary or confidential information. District shall keep such records confidential.

* + - 1. Dietary and Religious Requirements: Food prepared and served under a Kosher, Halal, vegetarian, vegan, gluten-free, or allergen-free label must be prepared with ingredients and in pans with utensils and on cooking surfaces that have not been used to prepare, process, or cook any non-conforming items. All such cookware and cooking surfaces must be clearly identified, and employees must be trained regularly on preparation protocols to ensure compliance.
			2. Bakery: Contractor’s bakery items will be baked fresh on campus or delivered fresh to the Facilities by outside vendor(s).
			3. Recipes: Contractor’s recipes will be made available to customers upon their reasonable requests for review of ingredients or nutritional or allergen information. Nutritional and allergen information and ingredients for standard menu items will be posted in accessible and visible locations at the Facilities and on the Services’ website and mobile applications prior to each mealtime. Every food item must be labeled with allergen ingredients highlighted for consumer awareness.
		1. Food Inventory: Contractor shall own the Food and Beverage Inventory. Contractor shall procure all food inventories in its name and at its own expense. District shall provide Contractor with secure, safe, and adequate storage and refrigeration areas to maintain its inventories. District accepts no liability for loss, damage, or theft of any of Contractor’s inventory unless such loss, damage, or theft is due solely to District’s willful misconduct or negligence in its performance of its obligations under this Contract. Contractor will provide, but District will pay for, any-and-all temporary equipment to ensure the proper and safe storage, handling, and service of food in instances of interruption, unless such interruption is caused by Contractor, which in such an instance then Contractor will be responsible for all temporary equipment expenses. Product loss due to equipment failure caused by District’s negligence or misconduct will be billable to District by Contractor at Contractor’s wholesale cost.
		2. Food Donations: Where safe and practical, and in accordance with applicable laws, District encourages Contractor to donate any leftover food that cannot be used on campus to students, District food insecurity programs, shelters, or charitable causes in the area. Any such donation will be made in District’s and Contractor’s names. Data on donations should be tracked and reported to the District Representative.
		3. Prohibited Goods and Services: Contractor shall not offer for sale or sell on the Premises any tobacco products, alcoholic beverages, or any other products or beverages that are prohibited by any rules or regulations of the District or by any other applicable ordinance, statute, law, code or regulation issued or enforced by any other municipality, city, county, state, or agency that has any jurisdiction over the products or services provided by Contractor at the District.
	1. Other Food and Beverage Sales on District Property: Contractor understands, agrees, and accepts that District currently has, and may have in the future, merchandising and operating agreements and academic programs that allow District itself or its approved vendors to sell food and beverages at retail prices on campus or at District-affiliated off-campus sites or provide such food and beverages at no cost. These operations currently include, but are not limited to:
* Mission Bistro and its food trailer at Mission College
* Vending services at both Colleges
* Child development centers at both Colleges
* Concessions at both Colleges
* Student organizations at both Colleges

Contractor’s exclusive rights are limited to those described in Section 3.3 of this Contract, unless amended in writing by the mutual agreement of the Parties.

* 1. Non-Competition with Food and Beverage Contracts: Although District does not currently have an exclusive agreement with any firm to provide food/beverage services, District is under contract with vendors to provide food/beverage services and District may subsequently contract with a vendor for exclusive food/beverage services (collectively, “Other F/B Agreements”) at a later date. Contractor shall comply with any limitations created by all such agreements, including, but not limited to, Contractor agreeing not to sell food or beverage products that are deemed competitive with or disallowed by the terms of Other F/B Agreements. Contractor shall not enter into an exclusive F/B Agreement that would bind District without written approval by District.
	2. Advertising and Marketing:
		1. Marketing District Facilities: District is interested in marketing its facilities to appropriate external District clients. Contractor shall provide its expertise to assist District with this effort. Without limiting the generality of the preceding sentence, District’s expectations of Contractor in this area will include, but not be limited to, assisting District’s special events and conferences staff in identifying potential clients and working with District to develop menus and services that meet conference or camp needs to increase summer business.
		2. Corporate Identity: Contractor shall not advertise its company name, logo, trademarks, or images anywhere at District without the prior written approval of the District Representative.
		3. Publicity: All advertising, press releases, public announcements, and public disclosures by either Party relating to this Contract that include the other Party’s marks or language from which the connection of such marks may be inferred or implied, will be coordinated with and subject to the approval of both Parties prior to release.
		4. References: Contractor shall obtain the District Representative’s written consent before providing third parties with District’s name as a reference.
		5. Services Provided: Contractor shall not, without the prior written consent from the District Representative, indicate provision of sales or services to District in any of its product literature or advertising, or state in any of its advertising or product literature that District has purchased or used Contractor’s services.
		6. Marketing Plan: By August 1 of each Contract Year, Contractor shall submit to the appropriate Campus Representative for his/her prior approval its advertising and marketing plan for each College’s upcoming academic year. The Parties will review this plan in January of each Contract Year to determine if mid-year adjustments should be made. District reserves the right to require the withdrawal of any advertising or marketing item at any time. Contractor may not distribute any bulk advertising or marketing materials to a College’s community via any medium without prior written consent from such College’s Campus Representative.
		7. District shall:
			1. Allow Contractor the right to place its advertising materials and to participate in promotional activities on campus to at least the same extent as other approved vendors or advertisers.
			2. Provide Contractor reasonable advance notice of the deadline for placing advertising or participating in promotional activities on campus.
	3. Theft or Other Criminal Behavior: Unless public safety or District or Contractor personnel or property is in danger, Contractor shall not press charges against any District student, faculty, or staff suspected of theft or other criminal activity without prior consultation with and approval from the Campus Representative and/or College’s Police personnel at the College where the incident took place. Contractor will investigate all thefts, damages, or losses involving its or its Subcontractor’s personnel or property that occur at District and are suspected of being caused by Contractor’s or any Subcontractor’s employees and Contractor will reimburse individuals for losses or damages they incur there due to acts of Contractor’s or Subcontractor’s employees.
	4. Accidents or Injuries: Contractor shall notify District immediately of any accident or injury that occurs in the Facilities that its employees become aware of. Contractor’s employees shall take all reasonable steps to mitigate the extent of the accident or injury until appropriate emergency personnel arrive.
	5. Fair Labor Responsibilities: Contractor will comply with all applicable laws and District policies pertaining to labor standards and will take active steps to ensure procurement of Food and Beverage Inventory and Operating and Consumable Supplies from manufacturers that support fundamental human rights and fair labor practices.
	6. Americans with Disabilities Act: To meet the needs of disabled persons, Contractor shall adhere to ADA requirements in all aspects of the management and operation of the Services. Contractor shall notify the District Representative if it believes the Facilities do not meet ADA requirements and standards for appropriate provision of the Services.
	7. OSHA Compliance: Contractor represents and warrants that all Services it will perform under this Contract will meet or exceed the current safety regulations of the Occupational Safety and Health Act of 1970, as amended.
	8. Safety: Safety Precautions: Contractor shall be responsible for placing all barricades, warning devices, or other safety precautions around any area where Contractor is performing work that might pose a hazard or risk to any person.
	9. Sustainability: District expects Contractor to be a good environmental steward who will take commercially reasonable steps to reduce energy, waste, and other negative impacts to the environment, including:
		1. Sustainable Sourcing: District is dedicated to sustainability initiatives and protection and preservation of the environment; therefore, Contractor shall to the extent practicable procure products and services that are ecologically sensitive, help restore or enhance the environment, and/or have reduced negative effect on human health and the environment when compared with similar products or services. Contractor and District shall mutually agree upon on-campus sustainability initiatives related to the Services.
		2. Resource Reduction: Contractor shall partner with District to develop waste reduction goals and foster sustainability awareness among District students, faculty, and staff. Contractor must comply with District’s commitment to the recycling of metal, plastic, glass, corrugated cardboard, paper, and other waste products from the dining operations.
		3. Sustainable Practices: Contractor shall use commercially reasonable efforts to comply with District goals to employ environmentally sound, sustainable business practices, including:
			1. When commercially reasonable, use packaging that is made of biodegradable and/or recyclable products. No packaging foam or expanded polystyrene (“EPS”) shall be used in foodservice facilities for takeaway containers.
			2. Use biodegradable/compostable or wooden cutlery and paper straws and/or drink lids that do not require a straw.
			3. Strive to procure 20% sustainable food and drink products while maintaining accessibility and affordability for all students and foodservice patrons.
			4. Include and encourage drink options that are contained in glass rather than plastic.
			5. Sell and promote the use of refillable water bottles that may be filled at locations on the Premises.
	10. Performance Standards:
		1. Required Performance: To accommodate customer preferences and ensure excellent service, Contractor shall perform all of its obligations under this Contract, including, but not limited to, its obligation to maintain agreed-upon sanitation, health, and food safety standards in all assigned dining and seating areas in accordance with Article 4 of this Contract and applicable health and sanitation regulations and laws, except that Contractor shall not be liable for its failures to perform its obligations to the extent that Contractor is prevented from doing so because of District’s failure to perform its obligations under this Contract to maintain Facilities and Long-Life Equipment. Notwithstanding the foregoing, Contractor shall not be released from liability by District’s failure to perform its obligations under this Contract to maintain Facilities and Long-life Equipment to the extent that District is prevented from doing so because of Contractor’s failure to provide timely notice to District of defective, unsafe, unclean, or unhealthy conditions known to Contractor or to the extent such conditions should have been reasonably known by Contractor, and which defective, unsafe, unclean, or unhealthy conditions were not actually known to, nor should they have been reasonably known by, District without such notice from Contractor.
		2. Contractor Failure to Provide Required Products or Services: If Contractor fails to provide any product or service as required under this Contract, then, in addition to any other rights or remedies that the District may have under this Contract, including, but not limited to any right of termination, the District shall be authorized to remove that requirement under this Contract and/or to hire another contractor to provide that product or service.
		3. Key Performance Indicators (“KPIs”) and Performance Assurance Scorecard: District will evaluate Contractor’s performance under this Contract annually using the KPIs detailed in the Performance Assurance Scorecard (Exhibit F), which may be amended from time to time by mutual agreement of the Parties. In July of each Contract Year, District and Contractor will measure all KPIs from the previous Contract Year in alignment with Exhibit F to determine if Contractor has satisfied the KPIs. If Contractor has not satisfied the KPIs, the Parties will agree within thirty (30) calendar days of the review meeting on an improvement plan to promptly address deficiencies. In addition to the corrective process described in this Section 3.17.3, Contractor shall be subject to all other remedies available to District at law and pursuant to this Contract.
	11. Customer Satisfaction and Assessment and Sales and Traffic Monitoring:
		1. Customer Satisfaction and Assessment: Contractor shall have and use sophisticated assessment tools to monitor customer satisfaction. All customer satisfaction results collected by Contractor will be shared with District in a timely manner. Contractor shall, at its expense, conduct a minimum of one (1) District-wide written customer satisfaction evaluation each fall and spring semester and one (1) customer focus group each fall and spring semester at each campus. Additionally, Contractor shall at all times maintain customer feedback options on the dining services’ website and social media channels, and via comment cards or kiosks at each Facility. In response to feedback received, Contractor and each Campus Representative shall meet at least once per academic term to determine new initiatives that will support continuous improvement in the Services at each College.
		2. Sales and Traffic Monitoring: Contractor shall adopt commercially reasonable methods to track sales to District’s faculty, staff, and students, as well as all other retail shoppers, so District can understand buying patterns. All such sales tracking and traffic monitoring information will be reported to the District Representative and each Campus Representative on at least a quarterly basis in a form acceptable to the District Representative.
	12. Forms of Payment: Subject to the provisions of Section 8.4 below, Contractor must provide convenient payment options for customers, including (at a minimum) cash, District declining balance program dollars, electronic benefit transfer (“EBT”) cards (as allowed by law), contactless payment option(s), and MasterCard, Visa, and American Express credit cards. Mobile pay and/or digital wallet solutions are encouraged. Unless agreed to otherwise by District, all equipment and fees associated with the use or acceptance of non-District vouchers or credit or debit cards will be paid by Contractor. Catering sales to District departments may be invoiced directly to the District at invoice@wvm.edu. All such undisputed invoices from Contractor will be paid by District through an existing purchase order. District may change this catering payment process at any time after providing prior written notice to Contractor.
	13. Bad Debt: Contractor shall be solely responsible for the collection of any debts resulting from non-District sanctioned or sponsored customer credit or debit card charges, sales paid by a personal check, or extension of credit.
	14. Disposition of Property: Contractor shall be solely responsible for the disposition of all damaged inventory, supplies, tools, materials, and other damaged or surplus merchandise, regardless of the cause for such damage or surplus. Any loss sustained because of such disposition will be borne exclusively by Contractor unless such loss is sustained as a result of District’s breach of its obligations under this Contract or the sole negligence or willful misconduct of District or its employees.
	15. Standards of Performance: Without limiting the generality of the performance standards set forth herein, Contractor shall always operate the Facilities and perform its Services in accordance with the commercially reasonable best practices of the collegiate dining services industry and the terms and conditions of this Contract.
	16. Emergency Contact: Contractor shall maintain 24-hour availability of a responsible employee at each College with decision-making authority to be contacted in case of an emergency related to the Facilities or Services at such College. Prior to the Commencement Date, Contractor will submit the name and contact numbers of such employee in writing to each Campus Representative. Any changes to this emergency contact must be communicated immediately in writing to the appropriate Campus Representative.
	17. Service Interruption or Disruptive Action: Contractor’s onsite management shall notify the Campus Representative immediately of any actual or potential event, incident, or grievance that could lead to Services interruptions or delays. Contractor shall take all commercially reasonable actions to prevent such interruptions. In the event of a Services interruption that extends beyond twenty-four (24) hours, District reserves the right to take all actions necessary to restore the necessary level and quality of the Services, including, but not limited to, contracting with another foodservice management company or using equipment assigned to Contractor under this Contract. Any expenses incurred by District because of restoring such Services interruption may be charged to Contractor, if such interruption was caused by Contractor’s willful misconduct, negligence, or failure to perform its obligations as required under this Contract.
	18. Small, Women-owned, and/or Minority-owned Businesses Subcontracting and Evidence of Compliance:Where it is practical for any portion of this Contract to be subcontracted to other suppliers, Contractor is encouraged to offer such business to small, women-owned, and/or minority-owned businesses. District must approve all Subcontractors in writing in advance.
	19. Changes in Existing Conditions: The financial and operational terms of this Contract are based on conditions in existence as of the date Contractor commences Services, including, without limitation, District’s student, faculty, staff, and guest populations; retail and catering pricing guidelines; labor conditions; employee wages, benefits, and insurance costs; food and supplies costs; and federal, state, and local taxes. In the event of any material change in such conditions, the Parties shall negotiate in good faith to reach mutual agreement on adjustments to the financial and operational terms of this Contract; provided, however, that the foregoing provision is one of good-faith negotiation only and does not obligate or commit the Parties to actually adjust any of the terms of this Contract. Notwithstanding anything to the contrary contained in this Contract, District makes no representation and provides no warranty that the existing conditions presented during the RFP process or in this Contract will reflect future conditions. In the event that the Parties cannot mutually agree upon such adjustments, they will proceed in accordance with the dispute resolution proceedings set forth in Article 15.
	20. Pass Through Warranties and Third-party Products and Services:
		1. With respect to any third-party products or services purchased by Contractor for District in connection with the management of the Facilities or provision of the Services, Contractor shall pass through or assign to District the rights Contractor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights) to the extent that such rights are assignable and extend beyond the Completion Date.
		2. If Contractor is unable to pass through or assign to District any such third-party rights for products and services that are dedicated exclusively for use by Contractor in managing the Facilities or providing the Services, Contractor shall provide District with copies of the contract, agreement, or other written arrangement, if any, establishing such third-party rights, subject to such confidentiality or other disclosure restrictions set forth therein, and, during the Term of this Contract, Contractor shall use commercially reasonable efforts to exercise on District’s behalf the third-party rights. District shall provide assistance and execute any agreement reasonably requested by Contractor in order to permit Contractor to act on District’s behalf; provided, however, that District may give notice to Contractor that District does not desire to enter into such an agreement and, in such event, Contractor shall be relieved of its obligation to use commercially reasonable efforts to exercise the third-party right on District’s behalf.
		3. Contractor shall exercise commercially reasonable efforts to insert provisions into any facilities or equipment service contracts entered into by Contractor specifically to provide the Services to the District that would allow any such contracts to be assigned to District, at District’s option, upon expiration or termination of this Contract by either Party for any reason.
	21. Discrepancy or Inconsistency: In the event of any discrepancy or inconsistency between or among Contractor’s response(s) to the RFP and this Contract, this Contract will control.

**ARTICLE 4**

**HEALTH, SANITATION, AND CLEANLINESS**

* 1. General Responsibilities:
		1. Contractor shall at all times manage and monitor food sanitation and safety at the Facilities and otherwise perform all of its duties and obligations under this Contract in a manner that ensures: (i) the Facilities will comply with all applicable state, local, and District safety, health, and sanitation standards and regulations, (ii) District receives an “A” grade on any inspection conducted by the Santa Clara County Department of Environmental Health (“DEH”) or other regulatory authority, (iii) all food products for sale are purchased from vendors complying with all applicable federal, state, and local laws concerning sanitary preparation and manufacture of such products, and (iii) no customer cross-contamination or allergen issues. To manage cross-contamination and allergen issues, Contractor will at a minimum identify food ingredients at points of service and via its electronic applications, develop an incident response plan that gets any affected customer immediate assistance should it be needed, and develop allergen training for staff and allergic customers.
		2. Contractor will deliver copies of all DEH inspections, grades, notices, and evaluations to the appropriate Campus Representative within one (1) Business Day of Contractor’s receipt from DEH.
		3. Upon discovery, Contractor shall immediately notify appropriate District personnel of any unsafe, unsanitary, or unhealthy condition in the Facilities. Contractor shall take all necessary and prudent precautions to protect the health and safety of individuals and condition of property that is at risk because of such condition, regardless of cause.
		4. Contractor shall continually monitor the Facilities to identify deficiencies, whether such deficiencies arise from Contractor’s or District’s acts or omissions or some other cause. Contractor shall expeditiously remediate deficiencies that are Contractor’s responsibility under this Contract that may lead to code violations, operating or facility problems, or increased costs. Contractor shall promptly report to District upon observance of any condition that could reasonably give rise to a citation by health or food safety authorities. These reports will be reviewed in a timely manner by appropriate District and Contractor personnel who will mutually agree upon a corrective action plan.
		5. Contractor will promptly remedy any violation noted on a DEH inspection, provided such violation is due to Contractor’s performance or failure to perform as required under this Contract. Contractor is responsible for paying any fine(s) levied because of its operation of the Services and notify the District Representative and the appropriate Campus Representative immediately of receipt of any notice of such fine(s). Notwithstanding any provision herein to the contrary, District shall release Contractor from, and shall indemnify and hold Contractor harmless against, any fine, assessment, penalty, damage, judgment, cost, and expense, including reasonable attorneys’ fees, incurred as a result of District’s failure to remedy, or its delay in remedying, any defect or condition at the Facilities of which Contractor has provided sufficient notice to District or of which District had actual knowledge.
		6. Contractor shall train all its employees in safe food preparation and handling procedures, including, but not limited to, allergens, personal hygiene, cleaning, and sanitizing, as well as Hazard Analysis Critical Control Point (“HACCP”) principles and all contemporaneous applicable jurisdictional requirements (as the same may be amended or supplemented from time to time) and ensure such employees’ continued compliance with same. All supervisors will be ServSafe (or equivalent) certified within sixty (60) calendar days of assignment to District. At a minimum, there must be one ServSafe-trained supervisor at each dining venue during all operating hours. Contractor shall comply with any DEH food facility placarding and scoring program posting requirements related to DEH reviews of Contractor’s products, services and operation(s).
		7. Contractor, at its expense, shall be responsible for the purchase and maintenance of hand sanitizing stations in nonpublic areas of the Facilities. District, at its expense, shall be responsible for the installation and maintenance of handwashing sinks in the Facilities required by applicable law or regulation.
		8. Subject to any applicable laws regarding the privacy of personal health information, Contractor shall notify District in writing within five (5) hours of its receipt of any adverse health inspection or employee health examination report regarding the Facilities or Contractor’s employees providing Services received from any individual or regulatory authority. Contractor shall provide District with a written copy of such report immediately upon District’s request, but in no case later than twenty-four (24) hours after receiving it.
		9. Subcontracting of Managed Services: Contractor shall notify District in advance in writing of any subcontractors Contractor intends to use to perform any sanitation responsibilities set forth in this Contract. Contractor will describe in detail any Subcontractor to be used and the work it will perform. District reserves the right, in its sole discretion, to approve or reject any Subcontractor. Any and all sanitation services required of Contractor and subcontracted to a third party remain Contractor’s responsibility, and the use of a subcontractor shall not relieve Contractor of any of its obligations under the Contract or impose any liability or obligations upon District as to such subcontractor.
		10. Contractor is responsible for the prompt payment of all fines levied as a result of Contractor’s failure to operate the Facilities or provide the Services in compliance with applicable laws and regulations. Contractor will notify the District Representative and the appropriate Campus Representative within one (1) Business Day of any such fine levied at a College. District shall be responsible for payment of all fines levied as a result of District’s failure to comply with any applicable laws or regulations.
	2. Product Recalls and Alerts: Contractor shall immediately inform the District Representative and appropriate Campus Representative(s) in writing if any portion of the Services at a College is impacted by a product recall or alert issued by the USDA, FDA, or any other federal, state, or local health and safety agency. Furthermore, Contractor will provide in writing the specifics relevant to this recall/alert for distribution to District officials. Contractor will be required to contact its vendors and verify that no product included in the recall/alert was or could be distributed to District. If the possibility exists that any product involved in the recall alert could be in District’s onsite inventory, then Contractor will immediately conduct a product audit of such inventory. If any product is found onsite at District, Contractor will: (i) inform the District Representative and appropriate Campus Representative(s) of this finding; (ii) provide a detailed listing of all affected products onsite with associated costs and quantities; and (iii) comply with the directives issued for removal, return, and/or destruction of the product detailed in the recall/alert.
	3. Food Handlers:
		1. Contractor’s supervisory personnel shall visually inspect all food handlers throughout each day to ensure they are following established hygiene practices related to the handling of food, to include, but not be limited to, the following standards:
* Bathing daily.
* Wearing clean outer clothing and aprons.
* Wearing appropriate footwear.
* Keeping fingernails short and clean.
* Using hairnets or hats.
* Removing excessive jewelry during the preparation and serving of food.
* Washing hands with warm water and soap upon reporting for duty, after each visit to the restroom, and after handling raw meat, fish, or fowl.
* Wearing sanitary latex, plastic, or vinyl gloves when touching food.
* Changing latex, plastic, or vinyl gloves regularly or as needed to prevent contamination.
* Reporting open sores and symptoms of infectious diseases, including colds, to a Services manager.
* All other applicable Contractor, municipal, state, or federal health standards, laws, or regulations.
	+ 1. To the extent permitted by law, Contractor shall not knowingly allow its employees to work with open sores; known illnesses transmitted through the air or via human contact that could contaminate food, equipment, or people; or other symptoms indicative of illness. To the extent permitted by law, any contagious disease contracted by Contractor’s employees must be reported immediately to the Campus Representative where the employee works and, if required by law or regulation, to the appropriate public health authority as required.
	1. Contractor’s Specific Sanitation Responsibilities with Respect to the Facilities and Services:
		1. Contractor shall adopt a “clean-as-you-go” policy in all kitchens and servery areas.
		2. The Back-of-the-House and Front-of-the-House areas under Contractor’s management shall be cleaned to the standards required by the Santa Clara County Department of Environmental Health and other applicable codes, or such higher standard(s) to which the Parties agree. The floors will be kept clean throughout the day and there will be no trash lying on top of refrigerators, range shelves, dish tables, or similar surfaces. Contractor’s employees shall have easy and quick access to appropriate cleaning supplies, which should be appropriate for the task and ecologically sensitive. The specific areas of the Facilities that Contractor is responsible for cleaning are shown in the floor plans included in Exhibit J. District will notify Contractor in advance of any changes to these areas. The Parties shall negotiate in good faith to reach mutual agreement on whether any financial adjustments are needed to reflect Contractor’s increased or decreased costs related to cleaning the revised areas; provided, however, that the foregoing provision is one of good-faith negotiation only and does not obligate or commit the Parties to actually adjust any of the terms of this Contract.
		3. Contractor shall develop, implement, and keep updated a cleaning and sanitation schedule for all equipment in each area under its control at each College. Such schedule will be implemented upon the Commencement Date of this Contract. Contractor shall submit such schedule to the appropriate Campus Representative for review upon request. Each Campus Representative shall have sole authority to determine whether Contractor is satisfactorily complying with appropriate sanitation and cleaning standards at their College, with such standards being at least sufficient to meet all local health department requirements.
		4. Contractor shall be responsible for commercially reasonable cleaning of kitchen hoods’ pre-filters. District is responsible for cleaning of air ducts and hoods, grease troughs, and grease traps.
		5. Contractor shall clean and sanitize pot and dish rooms at least daily. No area will have excess water on the floor.
		6. Contractor is responsible for trash cans and can liners in Back-of-the-House areas under its control. District is responsible for other public area trash cans. The trash cans in the Back-of-the-House areas under Contractor’s control will be lined with plastic liners. None will be overflowing and all will have covers on them.
		7. Dumpsters and compactors will be placed at dining locations by District at no expense to Contractor. Contractor is responsible for repairing or replacing disposal equipment it damages. District is responsible at its expense for hauling trash away from the dumpster area(s).
		8. Dock Areas: Contractor will share loading dock areas with other District users. Contractor shall adhere to the rules and regulations for use of these docks to the extent they apply to the Services. Contractor will ensure its vendors are aware of and always adhere to such rules and regulations. Contractor will ensure its or its vendors’ use of the dock areas does not cause any access, sanitation, or storage issue.
		9. Contractor will not dispose of any cooking grease, oil, or fats in the wastewater system or refuse disposal. Disposition shall be handled by a rendering company or other approved method at Contractor’s expense.
		10. All offices, restrooms, and locker areas under Contractor’s management will be kept in a clean and sanitary condition.
		11. Contractor and District are both responsible for complying with District’s standards and requirements related to the clean, sanitary, insect- and odor-free, and safe use of District’s receiving and dumpster docks. District at its expense will provide for the placement and emptying of all dumpsters.
		12. All food in refrigerators and freezers will be properly covered in food storage containers or sealed with plastic wrap or aluminum foil, to the extent consistent with the local health department codes or Contract standards, whichever are higher. All items will be clearly labeled and dated to show when they were put in storage.
		13. Kitchen walls up to six feet high, interior windows, fixtures, furniture, and equipment in the Facilities will be kept clean and free from dirt, dust, and grease at Contractor’s expense.
		14. Back-of-the-House floors will be cleaned regularly by Contractor by washing or mopping. Office carpet will be vacuumed regularly by Contractor.
		15. Maintenance mats in the kitchen and food preparation and cooking areas will be kept clean at all times. Mats will be placed, replaced, and maintained at Contractor’s expense.
		16. Steam tables, coffee urns, fountain beverage containers, condiment tables, and similar equipment will be cleaned as needed or at least daily.
		17. Cooking surfaces of grills, griddles, and similar equipment will be cleaned as needed or at least twice daily and will at all times be free from encrusted grease or food deposits.
		18. Interiors of ovens, broilers, microwaves, toasters, hot boxes, and similar heating devices will be cleaned regularly or as needed.
		19. Refrigerators and dry storage areas will be cleaned at least weekly or immediately if a spill occurs.
		20. Freezers will be cleaned at least monthly or immediately if a spill occurs.
		21. Kitchen tables, cutting boards, meat grinders, knives, and similar items will be cleaned and sanitized after each use.
		22. Dining area tables, chair seats and seat backs, beverage counters, salad bars, condiment areas, and other Front-of-the-House FF&E will be wiped down frequently and kept in clean and sanitary condition by Contractor throughout all serving and operating hours. Contractor must be particularly vigilant during peak dining times.

* + 1. Contractor shall not use any Facility drain, pipe, or plumbing fixture to dispose of any waste materials for which such device is not intended, nor dispose of any waste material on open ground or in any exterior storm water drain.
		2. Contractor shall maintain commercially best standards of sanitation and cleanliness in the areas where trash and garbage are disposed of or collected. Contractor shall transport all trash and garbage from the dining locations to the appropriate collection areas in the least conspicuous and disruptive way possible. Contractor shall use commercially best efforts to prevent seepage or spillage along the route between the service and trash locations, and it shall immediately clean up any such seepage or spillage that occurs.
		3. With the exception of any mobile venue (e.g., food truck or trailer), Contractor shall not prop open any door to the outside or open any unscreened window to the outside. Entry and exit from all exterior doors should be as quick as possible to prevent insects or pests from entering the Facilities.
		4. All vehicles used by Contractor to transport food and beverages will be maintained in a clean and sanitary condition.
		5. Routine pest control for the Facilities is provided by District at no cost to Contractor. Contractor shall be actively involved in the pest control program and advise District immediately of areas of concern. Contractor may be billed for additional pest control services if its inadequate sanitation practices create a pest problem. Upon the Commencement Date of this Contract, Contractor acknowledges and accepts that all pest issues in the Facilities have been sufficiently addressed by District unless specifically noted otherwise by Contractor in writing to District prior to the Commencement Date.
		6. District shall have the right at all times to determine by inspection that the maintenance of the Facilities is satisfactory and in accordance with applicable health standards and the requirements described in this Contract. Any substandard performance by Contractor shall be cured immediately by Contractor.
		7. Contractor, at its sole expense, shall provide the cleaning and housekeeping supplies needed for the proper sanitation of the Facilities and equipment that Contractor is required to maintain under this Contract.
		8. Contractor shall respond promptly and effectively to any customer concerns related to food-borne illnesses (real or perceived) and be proactive in managing such issues with the goal of avoiding problems for Contractor or District. Contractor shall promptly notify the Campus Representative at the College where the incident took place of any such customer concerns.
		9. Contractor shall, within one (1) Business Day of receipt, forward to District a copy of all health inspection reports it receives following an inspection by the Santa Clara County Department of Environmental Health or a third-party inspector. If deficiencies are noted, Contractor shall include a written report that explains the cause of such deficiencies and describes how they will be corrected.
	1. Use of Outside Maintenance Vendors: Contractor shall notify District in advance in writing of any subcontractors Contractor intends to use to perform any cleaning, maintenance, pest control, consulting, compliance, or other services required to be performed by Contractor under this Contract. Contractor will describe in detail any Subcontractor to be used and the work it will perform. District reserves the right, in its sole discretion, to approve or reject any Subcontractor. Any and all such services subcontracted to a third party remain Contractor’s responsibility, and the use of a subcontractor shall not relieve Contractor of any of its obligations under the Contract or impose any liability or obligations upon District as to such subcontractor. For avoidance of doubt, District’s Facilities department will have a right of first refusal to perform any work related to the Facilities or FF&E, or to otherwise engage/manage outside vendors providing such work.
	2. Hazardous Materials:
		1. Contractor shall be responsible for the proper use, removal, and disposition of all Hazardous Materials that Contractor brings to the Facilities or onto District premises. No Hazardous Material brought to District’s premises by Contractor shall remain on the premises beyond the Completion Date except with prior written approval from District. No Hazardous Material shall be stored in the Facilities except in compliance with applicable regulations and District’s policies and procedures. If Contractor encounters unidentified material that it believes to be a Hazardous Material, Contractor shall immediately stop work in the affected area and report the condition to District. At no time is Contractor to dispose of Hazardous Material in chutes, dumpsters, drains, pipes, or any other waste container or on open ground. Contractor agrees to cooperate with District in its efforts related to the detection, removal, containment, treatment, and disposal of any Hazardous Material.
		2. Contractor shall furnish to District all material safety data sheets or safety data sheets on all products or materials used to perform the Services, if required by law or requested by District.

**ARTICLE 5**

**HUMAN RESOURCES**

* 1. Adequacy and Performance: Contractor shall provide sufficient, appropriately trained management and hourly personnel to ensure efficient and courteous service to customers during all business hours. Upon the Commencement Date, Contractor shall have, at a minimum, the number and types of employees working in the Facilities that are described in Exhibit B. Contractor agrees to provide District with its table of organization and staffing table by the Effective Date and by August 1 of every year of the Term thereafter, and any other time a material change is made.
	2. Employees: All employees providing Services or managing Facilities will be employees of Contractor, except for Subcontractors or independent contractors as allowed for under this Contract.
	3. Assignment of Personnel:
		1. Onsite Management: Contractor shall provide to District by the Effective Date and by August 1 of every year of the Term thereafter an organizational chart showing how the Services are managed. The District Representative and the appropriate Campus Representative shall be promptly notified of any subsequent changes to this structure as they occur at a College.
		2. Corporate Management: Contractor’s district, regional, or national managers shall have operations meetings with the District Representative and Campus Representatives on at least a quarterly basis to discuss financial results, account operations, and business strategies, as well as any other information pertinent to District’s Services or Facilities.
		3. Subcontracting of Managed Services: Contractor shall notify District in advance in writing of any subcontractors Contractor intends to use to perform any services required to be performed by Contractor under this Contract. Contractor will describe in detail any Subcontractor to be used and the work it will perform. District reserves the right, in its sole discretion, to approve or reject any Subcontractor. Any and all such services subcontracted to a third party remain Contractor’s responsibility, and the use of a subcontractor shall not relieve Contractor of any of its obligations under the Contract or impose any liability or obligations upon District as to such subcontractor.
		4. Assignment of Personnel: District reserves the right to request, with such request not to be unreasonably refused by Contractor, the assignment of Contractor’s personnel to particular activities or to prohibit the assignment of certain Contractor personnel to activities as District deems appropriate, provided that District provides such notification in writing and Contractor’s compliance with such request would not violate any applicable law or regulation or enforceable CBA.
		5. Employee Replacement: District reserves the right to require Contractor to remove from District’s account upon written notice to Contractor any Contractor employee (including managers) who, in District’s sole discretion, is incapable, uncooperative, or otherwise unacceptable, provided that compliance with such request would not violate any applicable nondiscrimination, employment, or other law or regulation. Such action will not be unreasonably applied by District and taken only after consultation with Contractor’s senior management.
		6. District Indemnification: Without limiting the generality of District’s indemnification obligations set forth in Article 12 below, District agrees to indemnify and hold harmless Contractor from losses, damages, and expenses, including reasonable attorneys’ fees, resulting from the non-assignment to or removal from District’s account of a Contractor’s employee at the request of District pursuant to this Article 5, if it is finally determined by a court or administrative tribunal of appropriate jurisdiction that such requested non-assignment or removal was unlawful.
	4. Facilities Managers:
		1. Onsite Managers: Recognizing how critical onsite managers are to Contractor’s success, Contractor shall only assign professionally qualified, experienced managers to the Facilities. The Dining Services Manager’s sole responsibility will be to District’s account; he/she will have no other substantial management or supervisory responsibilities for other accounts or businesses of Contractor but may assist with other Contractor activities or events on an occasional basis. Contractor’s managers assigned to a College must be reviewed by that College’s Campus Representative prior to their placement at the College. Subsequent changes to such assignments shall be made by Contractor only after prior consultation with such College’s Campus Representative, with termination by Contractor, voluntary resignation by such manager, or other event outside Contractor’s reasonable control that prevents such manager from working at District excepted. Each Campus Representative reserves the right to approve or disapprove of the qualifications needed for any onsite managerial position at their College. Contractor shall have the management plan described in Exhibit B in place by the Commencement Date.
		2. Onsite Supervision:
			1. Contractor shall always provide adequate and expert onsite supervision of its employees providing the Services. Contractor shall ensure that critical positions (those necessary to open the Facilities and operate the Services) have adequate back-up employees to call in to cover for absenteeism.
			2. Contractor’s supervisors shall be visible in the Front-of-the-House areas of the Facilities during mealtimes to engage with customers, monitor operations, and quickly resolve any service issues.
			3. In addition to the supervision of all Services, Contractor’s onsite management shall become familiar with District’s emergency, fire, and disaster plans and perform any assigned duties as may be reasonably required by District, to the extent such duties apply to the Services or Facilities.
		3. Campus Life Engagement:
			1. Onsite Managers’ Engagement: Contractor’s onsite management, especially the Dining Services Manager, shall, to District’s reasonable satisfaction, become involved in the academic, cultural, and social activities of each College, helping to promote such events through the dining program to the extent practical. Contractor’s managers shall, to Campus Representatives’ reasonable satisfaction, engage in each College’s academic, administrative, and student leadership to establish effective working relationships and solve concerns or problems related to the Services at each College. The frequency and duration of these meetings will be mutually established by the Dining Services Manager and Campus Representatives.
			2. College Stakeholders Meetings: Contractor’s managers shall meet with each College’s dining services stakeholders committee on a schedule determined by each College. The composition of each College’s committee will be determined by each College with input from Contractor.
			3. Diversity, Equity, and Inclusion: Contractor must be an active and resourceful partner in furthering District’s diversity, equity, and inclusion (“DEI”) efforts. District believes its dining program has a significant role to play in these efforts through employee hiring, training, promotion, and retention; food procurement and sourcing efforts that are sustainable and culturally authentic; student programming related to nutrition, health, and wellness; and creating welcoming and safe dining spaces for all, especially marginalized and underrepresented populations. Upon the Commencement Date, Contractor is expected to have policies or procedures that explicitly ban disrespectful behavior, discrimination, bullying, or harassment based on the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

* 1. Availability of Senior Corporate Management: Contractor agrees to have one of its senior corporate managers available to meet with the District Representative within three (3) Business Days of a District request to discuss and resolve important concerns related to the management of the Facilities or provision of the Services.
	2. Salaries and Benefits: As part of its commitment to fair and just wages, District expects Contractor and all its approved Subcontractors to abide by all applicable compensation laws and pay wages comparable or superior to employees working at similar positions within the region. Contractor shall as of the Commencement Date and throughout the Term pay Contractor’s hourly workers assigned to District at least the minimum straight-time wage as required by the State of California or local government, whichever is higher. Contractor shall also as of the Commencement Date and throughout the Term require Subcontractors to pay Subcontractors’ hourly workers assigned to District at least the minimum straight-time rate as required by the State of California or local government, whichever is higher. Contractor and Subcontractors shall not make any substantial change in the salaries or benefits of their employees providing Services on the District’s Premises, except as may be required to comply with any applicable law, regulation, ordinance, or court order, without first consulting with the District Representative.
	3. Non-Contractor Temporary Workers: District expects Contractor to have sufficient, appropriately trained hourly personnel on its own payroll to ensure efficient and courteous service to customers during all operating hours at all locations. The Parties must mutually agree on regular use of temporary workers for any of the Services beyond catering and special events.
	4. Collective Bargaining: Contractor shall recognize and respect the rights of its employees to bargain collectively, negotiate in good faith and with appropriate diligence with any labor union representing Contractor’s employees, and honor any enforceable CBA applicable to the Services. No Contractor employee shall be subject to harassment, intimidation, retaliation, or termination from Contractor due to his/her efforts to bargain collectively or because of his/her membership in a labor union.
	5. Transitioned Hourly Workers: As soon after the Effective Date as practical, and in coordination with and with permission from the incumbent operator, Contractor shall have the option to interview current dining services hourly employees who are interested in becoming Contractor’s employees at a College. If Contractor hires any such transitioned employees, Contractor shall match such employees’ wages and benefits and maintain these wages and benefits for the duration of such employees’ employment with Contractor. Contractor is solely responsible for final hiring decisions.
	6. Working Conditions: Contractor understands and accepts that work hours and general conditions of employment for its employees shall be established and maintained in a manner consistent with similar higher education dining operations within the region. Contractor shall not make any substantial change in the working conditions of employees present on the Premises (including with respect to changes that may be required to comply with any applicable law, regulation, ordinance, or court order), without first notifying and receiving approval from the District Representative.
	7. Employee Taxes and Benefits: Contractor is solely responsible for the payment of:
		1. All of Contractor’s employees’ wages and benefits.

* + 1. All of Contractor’s employees’ payroll taxes.
		2. All worker’s compensation premiums and claims made by Contractor’s employees.
		3. All unemployment insurance premiums.
		4. All employees’ paid time off, including, but not limited to, vacation, sick time, holidays, jury duty, bereavement leave, and family leave.
		5. All other taxes, obligations, or benefits due to any Contractor employee because of his/her employment by Contractor.
		6. All payroll and benefit administration costs.

Contractor shall indemnify, hold harmless, and defend District from any claim relating to wages or benefits that were paid or should have been paid by Contractor under this Contract. This obligation will survive any termination or expiration of this Contract.

* 1. Student Employees: District strongly encourages Contractor to hire District students, particularly those students in the Mission College hospitality/culinary academic program. Contractor is allowed to utilize federal work study students to provide Services if they are available. District will provide appropriate support in assisting Contractor in its efforts to hire work study and other students. Contractor may use District’s Career Services to recruit employees.
	2. Employment Policies: Contractor’s employment policies will meet the requirements of the Fair Labor Standards Act and all other federal, state, and municipal laws and regulations. All personnel policies and procedures governing Contractor’s employee behavior will be available for review by the District Representative upon reasonable notice to Contractor.
	3. Training: Contractor shall provide through its own resources appropriate and regular training for its employees to improve their ability to perform at the high level expected of them, including with respect to culinary excellence, customer service, equipment operation, compliance with District sanitation standards, and satisfaction of Contractor’s obligations under this Contract. Contractor shall train all employees in safe food handling, including, but not limited to, personal hygiene, cleaning, cross-contamination, and all current regulatory requirements by the Commencement Date. Contractor shall ensure that its employees are trained on how to operate and maintain each piece of equipment under its control in a proper and safe manner prior to its use. Thereafter, Contractor shall ensure that its employees continue to adhere to such standards and practices, providing additional training as necessary.
	4. Contractor’s Employee and Subcontractor Conduct:
		1. Contractor’s employees and subcontractors shall always while providing the Services adhere strictly to District’s regulations regarding personal behavior and all other policies as may be established and promulgated to Contractor from time to time by District. District shall provide such regulations and policies to Contractor within thirty (30) calendar days after the Effective Date. District shall also provide Contractor with written notice of any changes to its regulations and policies before Contractor shall be obligated to comply with them.
		2. Contractor is responsible for the acts of its employees and Subcontractors while they are on the Premises. Accordingly, Contractor agrees to take all reasonably necessary measures to prevent injury or loss to persons and property located on the Premises. Contractor is responsible for all damages to persons or property caused by Contractor or its employees/subcontractors while on the Premises. Contractor shall promptly repair or replace at its cost, in accordance with District instructions, any damage that its employees/subcontractors cause to District property. Upon Contractor’s failure to make such required repairs or replacements, District may repair or replace the damage and charge Contractor for any reasonable expenses incurred and Contractor shall promptly reimburse District the full amount of such expenses. At its option, District may offset against all amounts due to Contractor any reasonable expenses incurred in connection with Contractor’s required repairs or replacements.
		3. Contractor shall ensure that its employees and Subcontractor’s employees maintain suitable personal hygiene and appearance standards while performing the Services. Furthermore, Contractor shall ensure that its employees and Subcontractor’s employees always use and/or wear the protective clothing and equipment needed to perform the Services safely.
	5. Undocumented Workers: The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“Immigration Act”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“I-9 Form”) as the document to be used for employment eligibility verification. Contractor shall be required to: (i) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (ii) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (iii) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (iv) retain the I-9 Form as required by applicable laws. Contractor represents and warrants that as of the Effective Date it is in compliance with the Immigration Act and agrees to remain so for the duration of the Term.
	6. Pre- and Post-employment Testing:
		1. Contractor is responsible for all costs associated with recruiting, screening, testing, and hiring applicants for any position providing Services to District, as well as any ongoing screening, testing, or monitoring of employees providing Services to District.
		2. Contractor retains sole discretion and final decision-making authority regarding its employment hiring decisions. District retains sole discretion and final decision-making authority regarding persons who are permitted to have access to the Premises. Every Contractor employee who will provide Services shall, at a minimum, undergo a sex offender registry screening, criminal background check, fingerprinting, and verification of name and Social Security number from a District-approved agency prior to their assignment to District. Managers assigned to District will undergo drug testing by a licensed testing agent acceptable to District. Contractor shall review the results of all adverse screenings to determine whether such persons may be assigned to District to provide Services pursuant to this Contract. Except with District’s express prior approval, Contractor shall not assign to District any employee who has a felony conviction, is a registered sex offender, or whose drug test revealed the presence of unlawful substances. District reserves the right to require Contractor to provide verification and documentation that the employee tests, screenings, and checks required under this Contract were performed. Contractor’s employees must repeat their background checks at least every three (3) years.
		3. To the extent permitted by law, Contractor shall require its employees to disclose to Contractor any new sex offense, felony conviction, or positive drug test for unlawful substances that occurs after they are assigned to District. Contractor shall, immediately upon learning of an employee’s conviction or positive test, notify the Campus Representative of the College where the employee works of such issue so the employee’s status can be discussed and determined.
	7. Employee Health:
		1. Health Examinations: Contractor shall cause all its employees assigned to District to submit to periodic health examinations on a schedule at least as frequently and with protocols at least as stringent as those required by applicable law. Contractor will submit satisfactory evidence of compliance with all health regulations to the District Representative upon request.
		2. Applicable Laws and Regulations: Contractor shall at all times during the Term adhere to all federal, state, and municipal laws and regulations applicable to employee health and shall at all times require any approved Subcontractors to do the same.
	8. Employee Performance: Contractor shall be solely responsible for the hiring, performance, supervision, and termination of its employees.
	9. Employee Complaints: To the extent permitted by law, Contractor shall provide the District Representative and appropriate Campus Representative with notice as soon as possible, but not later than twenty-four (24) hours from Contractor’s receipt, of any material demands, complaints, or charges alleging violations by its employees assigned to District of any federal, state, or local laws or regulations that, if substantiated, would present an actual or potential threat to the health, safety, or security of the District community, District property, or District’s reputation. Contractor shall notify the District Representative and appropriate Campus Representative within seventy-two (72) hours of such demands, complaints, or charges related to other matters.
	10. Workplace Monitoring: District shall have the right to have its representative(s) or authorized agent(s) present to observe and witness the work being performed by Contractor’s employees although such representative(s) shall not direct or otherwise interfere with such employees’ activities. If, at any time, District determines, in its sole but reasonable judgment, that work is not being performed in accordance with the requirements, specifications, or obligations of this Contract; applicable law or regulation; or good judgment, District may notify Contractor of such deficiency and request that it be promptly remedied.
	11. Drug-Free Workplace: During the performance of this Contract, Contractor agrees to (i) adhere to District’s alcohol and other drugs policy; (ii) provide a drug-free workplace for Contractor’s employees; (iii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance (including but not limited to marijuana) is prohibited in Contractor’s workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iv) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (v) include the provisions of the foregoing clauses in every subcontractor’s agreement so that the provisions will be binding upon each subcontractor. District’s alcohol and other drugs policy that Contractor’s employees must adhere to at all times is subject to change at District’s sole discretion. District will provide Contractor with any updates to its alcohol and other drugs policy if they occur.
	12. Uniforms: Contractor shall, at its sole expense, outfit all employees in uniforms and safety equipment acceptable to District and in compliance with any enforceable CBA and applicable environmental, health, and safety laws and regulations. Contractor shall ensure that all uniforms and safety equipment worn by employees to perform the Services are in good condition and cleaned regularly to present a suitable image to District. Contractor’s uniforms must clearly identify the wearers as Contractor’s employees. Contractor must provide clearly readable nametags for all its front-line employees and require such tags to be always worn and easily visible. District’s approval of Contractor’s uniforms and safety equipment in no way relieves Contractor of its obligation to provide uniforms and safety equipment in compliance with this Contract, any enforceable CBA, or applicable environmental, health, and safety laws and regulations.
	13. Photo Identification: Contractor shall ensure that all its employees and all Subcontractor employees working in the Facilities display a photo identification badge that is clearly visible on his or her person when on District’s premises. The identification badge will be issued by Contractor at Contractor’s expense.
	14. Nonsolicitation: In consideration of the Parties’ agreement to perform their obligations under this Contract through valued managers who may have specialized knowledge of their employer’s trade secrets, intellectual property, and proprietary methods, the Parties covenant and agree they shall not during the term of this Contract and for a period of twelve (12) months thereafter, and not without the other Party’s prior written consent: (i) solicit or hire any of the other Party’s managers who provided services related to this Contract, (ii) solicit or retain as an independent contractor any of the other Party’s managers who provided services related to this Contract, or (iii) otherwise induce, influence, or encourage to terminate employment with the other Party any manager who provided services related to this Contract; provided, however, that this restriction will not apply to managers formally terminated by a Party prior to any solicitation or influence thereof. This Section 5.25 may be specifically enforced in any court of competent jurisdiction, and attorneys’ fees will be awarded to the non-breaching Party in any such enforcement action, regardless of any other provision of this Contract.
	15. No Consideration: Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Contract.
	16. Joint Employment: Notwithstanding anything to the contrary contained in this Contract, this Contract does not establish a joint employment or co-employment relationship between the Parties. Contractor’s employees and Subcontractors are not entitled to any District benefit unless expressly agreed to in writing by the District.

**ARTICLE 6**

**FINANCIAL MATTERS**

* 1. Financial Terms: The financial and operational terms of this Contract are based on conditions in existence as of the Effective Date. In the event of a material change in the conditions or representations made hereunder, the Parties shall negotiate in good faith to adjust the financial and operational terms of this Contract on a mutually agreeable basis to reflect the impact(s) of such change; provided however, that the foregoing provision is one of good-faith negotiation only and does not obligate or commit the Parties to actually adjust any of the terms of this Contract. Pricing and operating requirements will be determined after taking into account the potential effect of such determinations and other relevant factors on Contractor’s or District’s ability to achieve its pro forma results and the Parties may agree to modify the financial arrangements between them in consideration thereof.
	2. No Guarantee: Unless expressly provided for otherwise in this Contract, District does not commit to specific volumes of sales activity at the Facilities, now or in the future, nor does it provide Contractor with any guaranty of profitability or cost recovery for any activity related to the Facilities or Services.
	3. Profit and Loss Operation: Unless expressly provided for otherwise in this Contract, Contractor shall operate the Facilities and provide Services on a profit and loss basis.
	4. Credit: Unless expressly provided for otherwise in this Contract, Contractor shall operate on its own credit with no advance payments from District.
	5. Purchasing:
		1. Procurement: District understands and accepts that Contractor has buying agreements with vendors for the purchase of Food and Beverage Inventory and Operating and Consumable Supplies used to provide the Services. Contractor’s costs will not exceed the prevailing prices for like grade, quality, and quantity of such products in District’s locality. Upon District’s request, Contractor shall meet with District to demonstrate and discuss the competitiveness of Contractor’s wholesale prices.
		2. Ancillary Services: In the event that Contractor, either directly or through one of its wholly owned subsidiaries, furnishes ancillary services to District’s dining services program, the charges for such services will be competitive with the cost of obtaining similar services from an independent source in the open market.
	6. Contractor’s Financial Obligations:
		1. New Capital Investments: (TBD based on successful Respondent’s proposal and negotiations with District.)
		2. Commission to District on Retail and Catering Sales:
			1. Beginning on the Commencement Date, Contractor shall pay District the following Commissions at the annual rates and on the schedule listed below:
				+ Retail Sales: (TBD based on successful Respondent’s proposal and negotiations with District.)
* Catering Sales: (TBD based on successful Respondent’s proposal and negotiations with District.)
	+ - 1. Reconciliation: The Parties will reconcile Commission payments in July for each just-completed Contract Year. Any additional amounts owed District will be paid by Contractor within thirty (30) calendar days once the Parties agree on the amounts owed. Contractor may deduct from Commission payments to District any amounts due and payable from District to Contractor pursuant to the terms of this Contract that are not the subject of a good faith dispute between the Parties.
		1. Annual Unrestricted Considerations: Contractor shall pay District \_\_\_\_\_\_\_\_\_\_\_\_ United States dollars ($\_\_\_\_\_\_\_\_\_\_\_\_.00 USD) in a lump sum by August 1st of each Contract Year (“Unrestricted Payment”). District may use the Unrestricted Payment for any purpose, including, but not limited to, the chancellor’s and presidents’ funds, student scholarships, Associated Students funds, sponsorships, or other considerations. All Unrestricted Payments made by Contractor through the Completion Date of this Contract are non-recoverable.
	1. Repayment of Allowable Unamortized Investments: Repayment by District of any of Contractor’s financial contributions made under this Contract will be managed as follows:
		1. Expiration or Termination by Either Party for Any Reason: In the event this Contract expires or is terminated by either Party for any reason prior to Contractor’s full amortization of the New Capital Investments shall, on its own or through a replacement contractor, pay Contractor the remaining unamortized balances due within sixty (60) calendar days from the Completion Date. The unamortized value of Contractor’s New Capital Investments will be calculated to the calendar day. Contractor shall, at any time during the Term of this Contract, upon request of District, provide Contractor’s calculation of such unamortized value, as of a date specified by District.
		2. Repayment of Other Financial Contributions Made by Contractor: In the event this Contract is terminated by either Party for any reason, all other financial contributions made by Contractor to District, including, but not limited to, Unrestricted Payments and Commission payments, are not recoverable and will not be repaid by District.
	2. Cash Sales: All cash sales from the Services will be collected by Contractor and deposited into its account(s) and accounted for as described in Section 6.14 below.
	3. Financial and Operating Statements: Contractor shall provide the following reports for the District Representative and each Campus Representative:
		1. Sales Activity Report by Accounting Period: A sales activity report for each Accounting Period, together with all supporting financial sales data, within twenty (20) calendar days of the close of each Accounting Period verifying all customer counts, meal counts, cash sales, card sales, catering sales, and any other pertinent sales information by College as requested by District. Contractor shall present the sales financial data by point-of-sale and/or venue in a format and with a level of detail acceptable to District. The statements will show each College’s budgeted and actual sales for the current Accounting Period, as well as year-to-date totals. Contractor shall provide cash register records by day and by register to District upon request. Contractor shall describe causes of unanticipated or unusual revenue deviations as part of these statements.
		2. Profit and Loss Statement by Accounting Period: A detailed profit and loss statement by each College’s venue or operating unit (cafeteria, catering, coffee bar, etc.) within twenty (20) calendar days of the close of each Accounting Period for activity during the preceding completed Accounting Period in a format and with a level of detail acceptable to District. The statements will show budgeted and actual revenues and expenses by College for the current Accounting Period as well as year-to-date totals. Contractor shall describe causes of unanticipated or unusual deviations from projections as part of these statements.
		3. Summary Profit and Loss Statement by Accounting Period: A summary profit and loss statement by College that rolls up that College’s operating units’ revenues and expenses (including those related to cost-plus operations) within twenty (20) calendar days of the close of each Accounting Period for activity during the preceding completed Accounting Period in a format and with a level of detail acceptable to District. The statements will show budgeted and actual revenues and expenses by College for the current Accounting Period as well as year-to-date totals. Contractor shall describe causes of unanticipated or unusual deviations from projections as part of these statements, as well as strategies for remediating them.
		4. Annual Profit and Loss Statement: An annual profit and loss statement for District’s entire account within forty-five (45) calendar days of the close of each Contract Year for activity during the preceding completed Contract Year in a format and with a level of detail acceptable to District.
		5. Annual Capital Improvement and Repayment Schedule: An annual capital improvement and repayment schedule within forty-five (45) calendar days of the end of each Contract Year describing the Improvements made by Contractor at each College for which Contractor expects to be repaid according to the terms described in Section 6.7 of this Contract.
		6. Annual Pro Forma: An annual pro forma that forecasts revenues and expenses projected by College for the following Contract Year in a format and with a level of detail acceptable to District. The pro forma will be presented to the District Representative and appropriate Campus Representative by the start of each Contract Year.
		7. Other Information: Contractor expressly acknowledges that its transparency in providing the Services and managing the Facilities is critical to District, and thus Contractor will provide any other financial or operating information pertaining to the Facilities or Services that District may reasonably request from time to time.
	4. Taxes: Contractor shall be responsible for the collection and timely payment of all applicable taxes levied after the Commencement Date. Sales from the Facilities to District patrons are normally exempt from state sales tax. Deliveries made under this Contract on behalf of District are usually free of federal excise and transportation taxes. District shall be responsible for property tax, if any, upon its real and personal property.
	5. Taxpayer Identification Number and Certification: Contractor’s Federal Employer Identification Number (“FEIN”) is \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Contractor shall at all times after the Effective Date ensure that a current taxpayer identification number and certification (Form W-9) is on file in the office of District’s controller. Contractor hereby acknowledges that its failure to have a current W-9 on file may delay payment of any invoice(s) submitted. Invoices presented to the District’s accounts payable office are deemed valid only if a current W-9 is on file with District.
	6. Payment of Obligations: Each Party shall pay its financial obligations to the other Party within thirty (30) calendar days of invoice. Notwithstanding the preceding sentence of this Section 6.12, or of any other term or condition of this Contract to the contrary, each Party shall have a grace period of fifteen (15) calendar days following such thirty (30) calendar day period before the service charge set forth in this Section 6.12 begins to accrue; provided, however, that no Party shall receive the benefit of more than two (2) grace periods in any twelve (12)-month period. Past due amounts will be subject to a service charge of up to one percent (1.0%) per month of the unpaid balance, together with all costs of collection of past due amounts, including, but not limited to, reasonable attorneys’ fees. To preserve District’s reputation, Contractor shall pay its outside vendors and Subcontractors in a timely manner, not to exceed sixty (60) calendar days from date of invoice.
	7. District Operating and Occupancy Expenses: Unless mutually agreed upon by the Parties, Contractor shall have no financial responsibility for District Operating and Occupancy Expenses identified as District responsibilities in Exhibit E.
	8. Books, Records, and Documents:
		1. Contractor shall keep all records on a Contract Year basis.
		2. Contractor shall keep the books, records, and documents for District’s account in accordance with Generally Accepted Accounting Principles (GAAP.)
		3. Books, records, and documents will include, but not be limited to, accurate books, records, and documents that will disclose separately for each Business Day of the Term all information required to determine Gross Revenues and exclusions from Gross Revenues.
		4. Contractor shall inform District of the schedule of independent audits of Contractor’s records and operations related to District’s account. District shall receive a report of any findings that materially affect District’s account.
		5. Notwithstanding any provision in this Contract to the contrary, District shall not be obligated to make any payment to Contractor if Contractor is in material breach or default under this Contract or if any part of the payment is attributable to Services that were not performed in accordance with the specifications. However, District shall make payment for all Services that were performed in accordance with the specifications, provided that District has no pending or prospective claims against Contractor for damages, expenses, or losses arising under this Contract.
		6. No partial payment made by District shall be, or construed to be, final acceptance or approval of that portion of the Services not performed in accordance with the specifications to which the partial payment relates, nor shall such partial payment relieve Contractor of any of its obligations under this Contract.
		7. The acceptance of Final Payment by Contractor shall be full and final settlement of all of Contractor’s claims, past, present, or contingent, arising out of or in connection with this Contract. Such acceptance constitutes a waiver of all claims by Contractor except those previously identified and described in writing to District by Contractor as unsettled at the time of the Completion Date.
	9. Audit:
		1. Audit Rights: All books, records, and documents pertaining to Contractor’s operations of District’s account under this Contract will be made available by Contractor to District or District’s authorized representatives during normal business hours on any Business Day upon reasonable notice from District. District or its authorized representatives may audit or inspect such records as deemed appropriate. Contractor shall cooperate with District or District’s authorized representatives during such inspections or audits.
		2. Subcontractor Books and Records: If any of the duties of this Contract are carried out through a Subcontractor whose contract with Contractor is valued at or costs $20,000 or more over a twelve (12)-month period, access is similarly required to such Subcontractor’s books, documents, and records related to the rendering of services to District. Such Subcontractor’s agreement with Contractor will be in writing and will contain a similar access clause to that herein.
		3. Audit Results: If an audit determines District has not received payment(s) from Contractor in accordance with the terms of this Contract, Contractor agrees to pay District the delinquent payment(s) within ten (10) calendar days plus interest from the date of delinquency at the rate of one percent (1%) per month. Receipt of such payment shall not preclude District from pursuing any other right or remedy available under law. In addition, if the audit determines that Contractor has underpaid District by more than ten percent (10%), Contractor shall pay the entire cost of the audit.
		4. Record Retention: Contractor shall retain all records relating to the Services for at least five (5) years following the Completion Date.

**ARTICLE 7**

**FACILITIES AND EQUIPMENT**

* 1. Access to Facilities:
		1. District shall provide Contractor with reasonable access to the Facilities so it can efficiently and effectively perform the Services. Contractor shall access only those areas of the Facilities that are necessary for it to perform its duties and obligations under this Contract and shall have no right of access to any other area of the Facilities except by invitation from District. Contractor shall not use any District equipment, including, but not limited to, computers, printers, televisions, telephones, desks, chairs, copiers, or other equipment that is not specifically assigned by District to Contractor for Contractor’s use.
		2. Contractor shall not limit District’s access to the Facilities in any way. District and its agents or representatives shall always have access to the Facilities.
		3. District reserves the right to use any of the Facilities for special activities but will endeavor not to disrupt scheduled Services. When such activities occur, the area(s) will be cleaned and rearranged after each use at District’s expense to return the area(s) to the condition existing before the activity.
		4. When Contractor uses areas that are not assigned to it pursuant to this Contract, or which are not primarily intended for the Services (e.g., meeting rooms, lounges, outdoor spaces, etc.), Contractor shall perform the appropriate setup and cleanup of food and beverages in such areas after the completion of every event. If Contractor moved or rearranged FF&E in any such area for an event then Contractor will promptly restore the area to conditions satisfactory to District before the next scheduled use of the area, which includes housekeeping and sanitation of the area and equipment and trash removal. Contractor is not responsible for FF&E moved or rearranged by District or another third party. All food, beverages, and service equipment must be removed within two (2) hours of the completion of the event or as quickly as practical. Under no circumstances are food, beverages, trash, or service and display equipment and fixtures to be left overnight. This provision will not apply to catered events with drop-off food and beverages consisting of all disposables, provided that Contractor shall clearly inform the host of such event that removal of disposable items is strictly the host’s responsibility.
	2. Financial and Operational Responsibilities of the Contracting Parties: The Financial and Operational Responsibilities Summary, included as Exhibit E of this Contract, identifies the responsibilities Contractor and District are obligated to perform during the Term. Contractor understands and accepts these responsibilities, which may change from time to time upon mutual agreement of the Parties.
	3. Additions, Modifications, Relocations, or Deletions from the Existing Facilities: District reserves the right, after providing reasonable notice to Contractor, to add, delete, relocate, or modify the Facilities. In the event a change in the Facilities affects the Services, the Parties agree to renegotiate in good faith should such a change make a material change to either Party’s interests or obligations, including, without limitation, increased costs, decreased revenues, or impacts upon operating efficiencies.
	4. Furniture, Fixtures and Equipment (FF&E):
		1. FF&E in the Front-of-the-House: Unless mutually agreed to otherwise by the Parties, District at its cost shall provide the tables, chairs, cabinetry, serving stations, salad bars, food and beverage coolers, beverage pouring equipment (if not provided by beverage companies), and other FF&E used in the Front-of-the-House by customers utilizing the Services (“FOH FF&E”). District shall retain ownership of all FOH FF&E and be solely responsible for its maintenance, repairs, and replacements except for such maintenance, repairs, and replacements due to damages caused by Contractor’s employees or Subcontractors. Contractor shall be solely responsible for the regular and thorough cleaning throughout the day of the FOH FF&E in the Front-of-the-House areas described in Exhibit J. New purchases of FOH FF&E will be made with Contractor’s input to the extent necessary.
		2. Long-life Equipment and FF&E in the Back-of-the-House: Within sixty (60) calendar days of the Effective Date, District shall submit to Contractor a list of all District-owned Long-life Equipment and other FF&E in the Back-of-the-House to be placed under Contractor’s management for use in providing the Services (“BOH FF&E”). District shall provide this BOH FF&E in working order. Contractor shall be required to keep all such BOH FF&E under its control in proper condition. District shall be financially responsible for the preventive maintenance, repair, and replacement of the BOH FF&E; provided, however, that Contractor, at its own expense, shall repair or replace any BOH FF&E damaged or made inoperable by Contractor’s neglect or abuse. Contractor will directly notify District’s kitchen equipment services vendor to perform preventive maintenance and needed repairs or services. Contractor will obtain the appropriate Campus Representative’s prior written approval on any repair or replacement estimated to cost more than $500. Contractor shall provide the appropriate Campus Representative in a timely manner with copies of all service tickets or invoices related to preventive maintenance and repairs of District-owned equipment. Contractor will consult on the replacement or repair of BOH FF&E that may be reasonably required from time to time. The Campus Representative at the College where the equipment is located shall make the final decision regarding whether BOH FF&E is repaired or replaced.
		3. Smallwares: Contractor shall at its expense purchase and maintain the required Smallwares needed to provide Services at the Facilities. Contractor shall maintain ownership of all such Smallwares.
		4. Fire Extinguishing Equipment: District shall provide, at its expense, all fire suppression and extinguishing equipment in the Facilities. Contractor shall notify District immediately of any problems with such equipment that Contractor notices.
		5. Additional FF&E: Contractor shall be responsible for providing certain additional FF&E as may be necessary for the successful operation of the Facilities and provision of Services, including, but not limited to, office machines, food inventory management systems, and merchandising displays. All such FF&E needed for the successful performance of the Services will be provided by Contractor at its sole expense. Contractor shall retain ownership of any such FF&E.
		6. Contractor Repair of FF&E: Contractor shall be responsible for the maintenance or repair of those items described as Contractor’s responsibilities in Exhibit E.
		7. Damaged or Deficient FF&E under Contractor’s Control: Within ten (10) Business Days after the Commencement Date, Contractor shall submit to the District Representative a list of all Contractor- and District-owned FF&E under its control and used in the Facilities. Contractor shall notify District of any deficiencies or damages to District-owned FF&E that Contractor believes should be corrected. District and Contractor shall then determine how such deficiencies or damages should be corrected, if at all. If, after acceptance by Contractor, equipment provided by District becomes inoperable or hazardous to operate through no fault or other act of Contractor or any Subcontractor, Contractor shall promptly notify the District Representative of the issue and may temporarily remove such equipment from use. District shall make the final decision regarding whether damaged FF&E is repaired or replaced.
		8. Ownership of Facilities and FF&E: Facilities where the Services are performed remain the property of District. This Contract does not constitute a lease, convey any interest in real estate, nor grant any right of occupancy beyond what is expressly defined herein. All FF&E owned by District and provided to Contractor under this Contract shall remain the property of District unless such ownership is transferred to Contractor by written agreement of the Parties. All FF&E assigned to Contractor will be returned by Contractor upon termination of this Contract in the same condition as when accepted, normal wear and tear or loss or destruction due to fire or other casualty not caused by Contractor’s negligence or willful misconduct excepted.
		9. Signage: No signs, advertisements, or notices of any kind shall be painted or affixed to any part of the Facilities or a College’s premises until they are approved in writing by such College’s Campus Representative. Contractor is responsible at its expense for installing all signage related to its own or its Subcontractor’s brands or venues.
	5. Contractor-assigned Spaces:
		1. Existing Conditions: Within ten (10) Business Days of the Commencement Date, Contractor and District will inspect the Facilities and all other District property that Contractor will utilize to perform its obligations under this Contract. After that inspection, Contractor agrees to accept the Facilities, Long-life Equipment, and FF&E “AS-IS,” “WHERE-IS,” and “WITH ALL FAULTS” as of the Commencement Date, except for the conditions listed in Exhibit H (to be mutually agreed-upon, completed, and added to the Contract by amendment after such inspection), which District will repair or replace at its own expense within thirty (30) calendar days following the Commencement Date. **EXCEPT AS SET FORTH IN THIS CONTRACT, THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY DISTRICT PROPERTY OR THIS CONTRACT, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
		2. Contractor’s Office Space and FF&E: District shall, at its expense, provide adequate office space for Contractor’s on-site manager(s) who oversee the Services. District provides the office space to Contractor in “as-is,” “where-is,” and “with all faults” condition. District shall also at its expense provide Contractor with the office FF&E described in Exhibit G. Contractor, at its expense, shall provide any additional FF&E not included in Exhibit G that it needs for the successful operation of the Services. Contractor shall be responsible for cleaning any office space assigned to it. District may, at its discretion and with prior notice to Contractor, reassign Contractor’s managers to other office space. Contractor shall not use District’s Facilities, including any assigned office space, for any commercial or personal purpose except to provide Services to District under the terms of this Contract.
		3. Contractor’s Restrooms: District, at its expense, shall provide Contractor with restrooms for Contractor’s employees’ use during the Term. Contractor shall be responsible for cleaning any restroom spaces assigned for its exclusive use. District shall not be liable for theft of or damage to the personal property of Contractor’s employees left in these areas.
		4. Contractor’s Storage Areas:
			1. District shall provide to Contractor, at District’s expense, adequate areas for storage of Food and Beverage Inventory, Long-life Equipment, Short-life Equipment, Smallwares, and Operating and Consumable Supplies used to provide the Services.
			2. District shall retain access to all storage areas assigned to Contractor but shall not utilize any of Contractor’s equipment or supplies stored there for its own purposes or unreasonably interfere with Contractor’s ability to utilize such areas.
			3. District is not responsible for losses, thefts, or damages to Contractor’s equipment or supplies stored in the assigned storage areas, unless such losses, thefts, or damages are due solely to District’s gross negligence or willful misconduct.
			4. Contractor shall only store in the assigned storage areas the supplies and equipment used (or to be used) to provide the Services. Contractor shall ensure that at all times all equipment and supplies are stored safely, securely and in compliance with manufacturer’s or producer’s specifications and applicable law or regulation.
			5. Contractor shall promptly notify District of any security or safety issues related to the storage areas assigned to it.
			6. District may reassign Contractor’s storage areas at its discretion after providing prior notice to Contractor.
			7. Contractor acknowledges that it has inspected the storage areas and warrants they are acceptable for performing the Services required of Contractor under this Contract, including Contractor’s compliance with applicable health and sanitation codes, except for the deficiencies and defects expressly noted by Contractor prior to the Commencement Date.
		5. Non-exclusive Access: District grants Contractor non-exclusive access to utilize the Facilities assigned to it. District shall always retain ownership of and access to all Facilities and may enter them at any time for any reason.
		6. Permitted Use: No unlawful activities are permitted in the Facilities assigned to Contractor. Contractor shall use the Facilities solely in the performance of its obligations under this Contract and shall comply with all laws, regulations, and District policies that apply to the assigned Facilities. Contractor shall cause its employees to observe and comply with all such applicable laws, regulations, and District policies.
		7. Modifications, Alterations, and Repairs by Contractor: Contractor shall not modify, alter, or repair any of the Facilities assigned to it without the prior written approval of District.
	6. Capital Improvement Plan and Facility Improvements:
		1. Development of Improvements Plan: The District will initiate, supervise, and fund all Improvements to the Facilities consistent with a plan mutually agreed upon by the Parties. Project management of the Improvements will be managed by District. Should the District want Contractor to manage any Improvements, then Contractor, if performing or hiring out for a public work as defined by California Labor Code section 1720, must ensure adherence to the requirements of California Labor Code Section 1725.5 (DIR Contractor Registration); California Civil Code 9550 (Bond Requirements); California Labor Code Sections 1771 through 1776; and to California Education Code Section 81704, when the Services performed or directed by Contractor require compliance with these Sections. Contractor acknowledges that it shall register, if required, with the California Department of Industrial Relations (DIR) by utilizing DIR's online application registry link located at <http://www.dir.ca.gov/Public-Works/PublicWorks.html> or ensure that any entity hired to perform a public work is similarly registered.
		2. No Interest Conferred to Contractor: No interest in or obligation of the Facilities, including the Improvements, is conferred upon Contractor. Except for Contractor’s obligations described herein, the Facilities remain in the ownership, care, custody, and control of District.
		3. Unauthorized Improvements: Contractor shall remove promptly upon District’s written request any Improvements made without District’s written consent.
		4. Liens: Contractor will not create or permit to exist at any time, and will, at its own cost and expense, promptly take such action as may be necessary to discharge any lien on all or any part of the Facilities or FF&E, title thereto, or any interest therein, attributable to the Improvements or FF&E procured by Contractor for District. Any failure by Contractor to do so shall constitute a material breach of this Contract.
	7. Public Approvals and Permitting: Unless agreed to otherwise by the Parties, the District will be responsible at is sole expense for securing applicable building permits for any renovation or construction undertaken within the Facilities.
	8. Repairs of Structure and Building Systems: Except as expressly provided for in this Contract, Contractor shall not be responsible for repairs to the Facilities’ Long-life Equipment, structures, substructures, or building systems, which include building shell, structural, electrical, plumbing, sewer, water, mechanical, elevator, heating, ventilation, and cooling systems, provided that such repairs are not required as a result of the negligence or misconduct of Contractor, its agents, subcontractors, or employees. If such repairs are required as a result of the negligence or misconduct of Contractor, its agents, Subcontractors, or employees, District shall pass the cost of such repairs along to Contractor for prompt payment.
	9. Repairs and Maintenance: The Financial and Operational Responsibilities Summary described in Exhibit E of this Contract outlines the Parties’ respective responsibilities related to repairs and maintenance of the Facilities and FF&E used therein.
	10. Utilities and Utilities Expenses: District shall be responsible for building standard Utilities. District does not guarantee an uninterrupted supply of such utilities to Contractor but shall take reasonable efforts to restore service following an interruption. District shall not under any circumstances be liable for any damages or losses resulting from any utility disruption, including, without limitation, product loss that may result from the interruption or failure of any such utility, or any loss of use or lost profit or other indirect damage, unless such interruption or failure is caused solely by District’s gross negligence or willful misconduct. Contractor shall employ environmentally sound practices that will further the District’s efforts in recycling, and water, wastewater, and utility conservation. For clarity, Utilities do not include Internet services.
	11. Parking: Contractor’s agents, Subcontractors, employees, vendors, and invitees are required to park in the areas designated for their use by the District and follow all established or posted parking policies. Parking areas are non-exclusive. Any parking expense for Contractor’s or Subcontractors employees will not be the District’s responsibility.
	12. Facilities Security and Security Systems:
		1. Security and Access Control: Contractor shall distribute keys and other access control devices to its employees and subcontractors only in accordance with the distribution policies established by District. Contractor shall be solely responsible for all keys or other access control device issued to its employees/subcontractors. Doors will be opened or unlocked only to areas in which Contractor’s employees/subcontractors are actively working. Doors will be locked and lights turned off once the Services are performed at the end of each day of operations. Contractor’s employees/subcontractors shall not open, unlock, or otherwise allow access to the Facilities for anyone not performing or supporting the Services without the express prior approval of District. In the event keys or other access devices issued to Contractor are lost or stolen, Contractor will report such losses to District immediately and will be liable for the cost of all replacements, including lock changes. Contractor shall not make copies of any keys to the Facilities without District’s express prior permission. Immediately upon the Completion Date, or as soon thereafter as practical, all keys and other access control devices issued to Contractor shall be returned to the appropriate College’s Campus Representative.
		2. Facilities Security: District has responsibility for providing all security personnel and systems needed to secure the Front-of-the-House and Back-of-the-House areas assigned to Contractor. While District will take reasonable precautions to protect Contractor’s property stored in the Facilities, District will not be responsible for losses or damages to Contractor’s property resulting from theft or damage, except to the extent caused by District’s sole gross negligence or willful misconduct.
		3. Security Systems: District shall be responsible for maintaining any intrusion alarms and surveillance systems it deems necessary for the Facilities or any other area from where Services are provided. Contractor must receive prior written approval from the District Representative prior to installing any additional systems. Any such additional security system will be installed and maintained at Contractor’s expense.
		4. Additional Access Control Devices: Contractor shall not, without the prior written approval of District, install locks or otherwise restrict access by District personnel to the Facilities or any other areas where Contractor is authorized to provide Services under this Contract.
		5. Security Incidents: Contractor shall be responsible for immediately reporting to District police any break-ins or unauthorized entries into the Facilities and all property losses associated therewith.
	13. Existing Agreements: Contractor acknowledges and accepts that District has existing agreements and service contracts that may require specific individuals or companies to perform maintenance, inspections, or repair work in connection with the Services or at the Facilities. Contractor will allow these individuals access to the Facilities as needed. District will endeavor to schedule these activities at times that do not unreasonably interfere with the Services.
	14. Removal of FF&E: Contractor shall not remove District-owned FF&E or Long-life Equipment from the Facilities for any reason other than for safety concerns or repair, except with the prior approval of the District Representative.

**ARTICLE 8**

**TECHNOLOGY**

* 1. Electronic Systems and Services:

* + 1. Contractor’s Responsibilities: Unless expressly stated otherwise in this Article 8, Contractor understands and accepts that it shall provide and maintain the following electronic systems and services needed to manage the Facilities and provide the Services as required of Contractor under this Contract at Contractor’s sole expense:
			1. POS System.
			2. Food and beverage inventory management system.
			3. Accounting system, including financial management and reporting.
			4. Payroll system.
			5. Employee timekeeping system.
			6. Services-specific website.
			7. Services-specific online / e-commerce sales and marketing applications, including, but not limited to, mobile ordering and delivery services.
			8. Services-specific informational kiosks, menu boards, or similar devices, if any.
			9. Services-specific applications (“Apps”).
			10. Services-specific social media accounts.
			11. Computer networks, hardware, software, and peripherals needed to connect to Contractor’s corporate offices. District at its expense will provide Internet connectivity in the Facilities for Contractor to use its networks, hardware, software, and peripherals to manage the Services.
			12. Contractor’s employees’ cellular services and devices.

Contractor is responsible for any repairs, replacements, additions, or upgrades to the POS System, except for items lost or damaged by District. Subject to the provisions of Section 9.1, Contractor will own the POS System and be responsible at its expense for POS System programming, network connections, service charges, and backbone maintenance.

* + 1. District’s Responsibilities: District shall provide at no cost to Contractor the following electronic systems and services needed to operate the Facilities and provide the Services:
			1. District shall be responsible for the preparation of a District identification card for each faculty member, staff member, and student.
			2. Telephone handsets and local phone service from land lines at Contractor’s assigned Facilities.
	1. Services Website: Contractor shall develop, host, and support, at its sole expense, an easily navigable and intuitive website specific to the Services. The site will be updated regularly and include accurate menus, pricing, special programs, catering information (including online catering ordering), health and wellness information, frequently asked questions (FAQs), operating hours, staff directory, and other important information. The website will be fully operational at least thirty (30) calendar days prior to the Commencement Date. The dining website will be linked to and easily navigated from District’s website.
	2. Social Media Presence and Use: Contractor shall utilize social media platforms to drive sales, connect with customers, and raise the dining program’s reputation and visibility. Specific expectations include generating, editing, publishing, and sharing engaging content (e.g., original text, photos, and videos); monitoring traffic metrics; collaborating with District departments to ensure brand consistency; communicating with followers, including responding to queries in a timely manner and monitoring customer reviews; and promoting dining special events and competitions. Contractor’s social media accounts related to the Services will be fully functional within thirty (30) calendar days prior to the Commencement Date.
	3. System Requirements: Contractor understands and accepts that, unless expressly agreed upon otherwise by District, all its electronic systems and services used to provide the Services must be:
* Purchased, tested, and maintained at no cost to District.
* Fully functional thirty (30) calendar days prior to the Commencement Date.
* Compliant with all applicable laws or regulations governing such systems, including those related to the Payment Card Industry Data Security Standard (“PCI DSS”) compliance and the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194.
* Secure and protective of District information and personally identifiable customer information, using contemporary best practices in the industry to protect against unauthorized access and threats and hazards to the security and integrity of such information, and in no event providing less than the same level of security that Contractor uses to protect its own data and information.
	1. System Integration: To provide the Services required under this Contract, Contractor may need to operate certain information technology systems not owned by District (“Non-District Systems”), which may need to interface with or connect to District networks or information technology systems (“District Systems”). Contractor shall be responsible for all Non-District Systems, and District shall be solely responsible for District Systems, including taking such security and privacy protections as are commercially reasonable under the circumstances. If Contractor serves as the merchant-of-record for any credit or debit card transactions in connection with any of the Services provided hereunder, then Contractor will be responsible for complying with the Payment Card Industry Data Security Standards, known as “PCI-DSS” (“Data Protection Rules”). If Non-District Systems interface with or connect to District Systems, then District agrees to use commercially reasonable efforts to implement upon request from Contractor, at District’s expense, the changes to District’s Systems that Contractor reasonably requests and believes are necessary or prudent to ensure Contractor’s compliance with the Data Protection Rules. Contractor shall be responsible for the cost of changes to Non-District Systems necessary to achieve compatibility with District Systems. District shall provide Contractor with advance written notice of any change to District policies pertaining to District Systems, or change in configuration of District Systems, in order that Contractor may assess the impact of such change upon the security of Non-District Systems.
	2. Compliance with District’s Information Technology Policies and Procedures: Contractor and its agents, Subcontractors, and employees shall at all times for the full Term of this Contract adhere to District’s information technology usage and security policies described in Exhibit K. Contractor shall only use District’s technology services for Services-related activities.
	3. Required Permissions: During the entirety of the Term, Contractor shall procure and maintain at its own expense all licenses, permissions, and other authorizations required for Contractor and District (and their respective employees) to use Contractor-provided systems described in this Article 8.

**ARTICLE 9**

**INVENTORIES**

* 1. Inventory Ownership:
	2. Within sixty (60) calendar days following the Effective Date, District shall determine District-owned
	3. FOH FF&E, BOH FF&E, and Long-life Equipment,
	4. and create an initial inventory of such items and include them in Exhibit G (“Initial Inventory”). Within thirty (30) calendar days following the Commencement Date, Contractor will verify the Initial Inventory and inform District in writing of any missing items, which District will be responsible for replacing. Unless expressly stated otherwise in this Contract, inventories will be owned as follows:
* District-provided office FF&E described in Exhibit G will be owned by District.
* Front-of-the-House FF&E will be owned by District.
* Long-life Equipment will be owned by District.
* Smallwares will be owned by Contractor.
* Short-life Equipment and catering equipment will be owned by Contractor.
* Food and Beverage Inventory will be owned by Contractor.
* Operating and Consumable Supplies will be owned by Contractor.
* POS System will be owned by Contractor.
	1. Return of District-owned FF&E: At the Completion Date or earlier termination of this Contract, Contractor shall deliver to District all District-owned FOH FF&E, BOH FF&E, and Long-life Equipment
	2. (and replacements thereof) in good condition (reasonable wear and tear or casualty not caused by Contractor excepted) or the value thereof. Upon mutual agreement of the Parties, District or its replacement contractor may purchase Contractor-owned Short-life Equipment, Operating and Consumable Supplies, and Food and Beverage Inventory at the values described in Section 2.13.
	3. Annual Inventory: Contractor and District shall prepare by August 1 of each Contract Year an update to the Initial Inventory that describes the quantity and value of the following, as of the end of the preceding Contract Year:
* Office FF&E
* FOH FF&E
* BOH FF&E

The accuracy of this annual inventory will be mutually signed by authorized representatives of both Parties.

**ARTICLE 10**

**INSURANCE**

* 1. Contractor Acceptance: Acceptance of this Contract constitutes Contractor’s understanding and agreement that it is not covered in any way by District’s insurance and that Contractor agrees, during the full term of this Contract, to maintain in force, at Contractor’s sole expense, the types and coverages of insurance described below.
	2. General Liability:
		1. Commercial General Liability: Commercial general liability insurance written on an occurrence basis, including, but not limited to, coverage for contractual liability, products and completed operations, personal injury, bodily injury, and broad form property damage liabilities with liability limits not less than:
		+ $2,000,000 each occurrence bodily injury and property damage,
* $4,000,000 general aggregate limit for bodily injury and property damage,
* $1,000,000 products and completed operations aggregate,
* $2,000,000 fire damage legal liability,
* $50,000 per person medical payments.
	+ 1. Commercial Automobile Liability Insurance: Commercial automobile liability insurance covering all owned, non-owned, and hired vehicles used in connection with Contractor’s performance of the Services under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than $1,000,000 per occurrence.
		2. Workers’ Compensation Insurance: Workers’ compensation insurance with minimum limits of liability in accordance with applicable state law and employer’s liability insurance with a minimum limit $1,000,000 per accident or occurrence, $1,000,000 per disease, and $2,000,000 aggregate.
		3. Umbrella / Excess Liability Insurance: Umbrella / excess liability insurance with limits of liability not less than $2,000,000 each occurrence and aggregate. The schedule of underlying insurance on this policy must list the commercial general liability (including sexual abuse / sexual misconduct), and automobile liability policies. Contractor may meet the overall insurance requirements through any combination of primary and excess insurance.
		4. Sexual Abuse / Molestation Insurance: Sexual abuse / molestation insurance with limits not less than $1,000,000 for each victim and $2,000,000 aggregate.
		5. Cyber Security Insurance: Security and privacy, data and network, and cyber liability insurance covering losses associated with data breaches of Contractor’s computer systems or Contractor’s unauthorized release of District employees’ or students’ personal identification information in the care, custody, and control of Contractor with minimum limits of $1,000,000 each loss and $2,000,000 in the aggregate.
	1. Property Protection: Contractor shall maintain the following insurance during the full term of this Contract:
		1. Personal Property Insurance: Replacement cost all-risk property insurance, in an amount sufficient to cover full replacement costs of all Contractor’s personal property, fixtures, inventory, equipment and Contractor’s improvements.
		2. Business Income or Interruption Insurance: Business income or interruption insurance in the amount of $200,000 or thirty (30) calendar days loss of income plus salaries, whichever is less.
		3. Performance Bond: Contractor shall, prior to the execution of this Contract, furnish a bond approved by the District, in the amount of Two Hundred and Fifty Thousand U.S. Dollars ($250,000.00 USD) to guarantee the faithful performance of the work performed pursuant to this Contract. This Contract will not become effective until such bond is supplied to and approved by the District. The bond will be issued by an admitted surety insurer and the District reserves the right to object to any such surety, in accordance with Code of Civil Procedure Section 995.660. Should the bond or any surety on such bond become or be determined by the District to be insufficient, it shall be replaced by Contractor within ten (10) calendar days by a bond that fully complies with the requirements of this Section 10.3.3. This bond shall be renewed annually for the entire term of this Contract and subsequent amendments to extend this Contract.
	2. Additional Insured: District, its subsidiaries, officers, directors, trustees, students, and employees shall be named as additional insured under the commercial general liability, liquor liability, umbrella/excess liability, and automobile liability insurance policies. Where required by the indemnification provision of this Contract, these policies will respond on a primary, non-contributory basis to any policies carried by District. Any insurance coverage (additional insured or otherwise) that Contractor provides for the District, its subsidiaries, officers, directors, trustees, students, and employees shall only cover insured liability assumed by Contractor in this Contract; such insurance coverage shall not otherwise cover liability in connection with or arising out of the sole negligence of District, its subsidiaries, officers, directors, trustees, students, and employees.
	3. Insurance Ratings: The insurance companies used by Contractor must be rated by A. M. Best Company as at least A-, VI and authorized to do business in the state of California.
	4. Type of Form: The certificate must indicate that the commercial general liability insurance is written on an “occurrence” form. Claims-made forms are not acceptable.
	5. Notice of Cancellation: Notice of cancellation of any insurance policies required herein shall be subject to ACORD 25 Certificate of Liability standards, and will be delivered, as applicable, in accordance with policy provisions. Without limiting the foregoing, Contractor shall immediately provide written notice to the District of the cancellation, expiration, termination, or material change to any policy that would cause Contractor to be non-compliant with the requirements set forth in Article 10 of this Contract.
	6. Waiver of Rights of Recovery and Waiver of Rights of Subrogation: The Parties waive all rights of recovery against each other and their subsidiaries, officers, directors, trustees, volunteers, and employees for loss or damage to the extent covered by any insurance maintained by them. The Parties further waive, and shall cause their respective insurance carriers to waive, all rights of subrogation for loss or damage covered by any insurance maintained by District or Contractor. If any insurance policy required under this Contract requires an endorsement to provide for the waiver of subrogation set forth above, then District or Contractor, as appropriate, shall cause such endorsement to be so executed.
	7. Certificates of Insurance: By the Effective Date, Contractor shall deliver to the District Representative all certificates of insurance evidencing Contractor’s required, enforceable coverages. Contractor shall not perform any Services under this Contract until such certificates are provided. Contractor shall deliver to the District Representative, without notice and prior to the expiration of any required certificate, all updated certificates so District always has written proof that required coverages are in effect.
	8. Deductibles: Each Party bears the costs of its respective deductibles or self-insured retentions for its required insurance coverages under this Contract.
	9. Contractor’s Failure to Provide Insurance: In case of Contractor’s failure to deliver the insurance required under this Contract, District reserves the right to secure such required policies on its own and hold Contractor responsible for the costs of such policies. District’s reservation of said right does not in any limit any of its other remedies it may have at law or under this Contract, including but not limited to termination of this Contract.
	10. Coverage for District-owned FF&E: District shall provide insurance coverage through its standard insurance program only on District-owned FF&E, Long-life Equipment, Facilities, and its other property. Such FF&E, Long-life Equipment, Facilities, and other property will be covered by standard forms of fire, theft, and extended coverage in such amounts under such policies as appropriate.
	11. Subcontractors’ Insurance: Subcontractors engaged by Contractor to perform any Services shall have the same insurance obligations as those required of Contractor under this Contract unless other coverages are allowed for by the District Representative’s prior written permission.
	12. Notice of Representation: District makes no representation that the limits or forms of coverage of insurance specified in this Contract are adequate to cover Contractor’s property or obligations herein.
	13. Risk: Contractor shall not do or permit anything to be done at any place where Services are provided, nor bring into the Facilities or keep on District premises, anything that would in any way increase any insurance rate or premium of District or that would constitute a nuisance or create a dangerous or hazardous condition for District. For purposes of the foregoing sentence, District agrees that the activities to be performed by Contractor under this Contract when such Services are performed in accordance with the terms of this Contract, industry standard practice, and any applicable laws and regulations, will not increase any insurance rate or premium or constitute a nuisance or create a dangerous or hazardous condition.

**ARTICLE 11**

**COMPLIANCE WITH LAW AND DISTRICT POLICIES**

* 1. Compliance with Applicable Laws: Contractor warrants that its performance pursuant to or in connection with this Contract shall be accomplished in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and codes, including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended by the Equal Opportunity Act of 1972 and the Civil Rights Act of 1991; the Americans With Disabilities Act; the Age Discrimination in Employment Act and Older Workers’ Benefit Protection Act; U.S. Occupational Safety and Health Administration (“OSHA”) requirements; the federal and state Family Medical Leave Act; the National Labor Relations Act; the Fair Labor Standards Act; the Employment Retirement Income Security Act of 1974, as amended; the Consolidated Omnibus Budget Reconciliation Act of 1985; the Worker Adjustment and Retraining Notification Act; immigration laws; California civil rights and wage and hours laws; and all other applicable laws.
	2. Permits, Licenses, and Authorizations: Prior to the Commencement Date, Contractor and its Subcontractors, employees, and agents shall obtain and maintain in full force and effect, all necessary permits, licenses, and authorizations required by governmental and quasi-governmental agencies to perform the Services and occupy the Facilities. Contractor shall advise District of all permits and licenses required to be obtained in District’s own name for the Services to be provided hereunder and shall cooperate with District in obtaining the same.
	3. Affordable Care Act: Contractor acknowledges, represents, and warrants that Contractor is aware of and understands the Patient Protection and Affordable Care Act (“PPACA”) and that Contractor acknowledges that it, and not District, has the entire responsibility and liability for any and all damages or claims of any nature whatsoever related to Contractor’s noncompliance or participation in the PPACA with respect to Contractor’s employees.
	4. Non-discrimination: It is the policy of District that in connection with any Services performed under this Contract there shall be no discrimination against any prospective or active employee engaged in or to be engaged such Services because of race, color, ancestry, age, national origin, marital status, gender, disability, disabled veteran status, or religious creed. Contractor shall comply with District’s non-discrimination policy and all applicable federal and California laws, including, but not limited to, the California Fair Employment and Housing Act, commencing with California Government Code, Sections 12940 et seq, and California Labor Code, Section 1735. In addition, Contractor shall require non-discrimination compliance by any and all Subcontractors employed by Contractor pursuant to the work under this Contract.
	5. Compliance with District Policies: Contractor shall comply with all applicable District policies and procedures with respect to Contractor’s activities under or in connection with this Contract. District shall provide copies of these policies and procedures to Contractor prior to the Commencement Date.
	6. Subcontractors or Other Contractor Vendors:
		1. Equal Opportunity Requirement: Any Subcontractor or other vendor to Contractor who provides Services, shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that such vendor or contractor is an equal opportunity employer.
		2. Subcontractor Obligation: Contractor shall include the provisions of this Article 11 in every subcontract or purchase order over $25,000 so that the provisions will be binding upon each Subcontractor or vendor.

**ARTICLE 12**

**INDEMNIFICATION**

* 1. Indemnification: To the fullest extent provided by law, Contractor shall indemnify, defend, and hold harmless District, its Board of Trustees, as individuals and an entity, its officers, directors, employees, volunteers, representatives, agents, students, partners, invitees, and guests (the “Indemnified District Parties”) from all claims, losses, liabilities, causes of action, awards, damages, judgments, settlements, legal expenses and costs, including reasonable attorneys’ fees and costs (collectively “Claims”) to which the Indemnified District Parties shall be subject, or for which they might be liable, arising out of or relating to the activities of every kind and nature whatsoever of Contractor or its officers, directors, partners, managers, employees, agents, subsidiaries, contractors, Subcontractors, Affiliates, or invitees in connection with Contractor’s performance under this Contract, except for Claims that arise exclusively from the negligence or willful misconduct of Indemnified District Parties.
	2. Defense Obligation: If required by Section 12.1 above, Contractor shall defend all Claims against the Indemnified District Parties arising under this Contract with counsel approved by the Indemnified District Parties, with such approval not to be unreasonably withheld, at Contractor’s expense. Contractor shall not, without the prior written consent of District, settle or compromise any Claim or consent to the entry of any judgment that imposes any liability upon the Indemnified District Parties.
	3. Health Department Violation Indemnification: Without limiting the generality of the foregoing Contractor indemnification obligation, in the event Contractor fails an inspection for reasons other than District’s failure to maintain the Facilities and District-owned FF&E as required under this Contract following timely notice from Contractor to District identifying such failures as required per this Contract, Contractor shall defend, indemnify, and hold the Indemnified District Parties harmless from and against any and all claims, demands, losses, damages, injuries, liabilities, expenses fines, judgments, liens, encumbrances, orders and awards, together with reasonable attorneys’ fees and litigation expenses (but excluding consequential, special, exemplary, or punitive damages), arising out of or in connection with such inspection failure.
	4. Notice: District shall give prompt written notice to Contractor of any Claim with respect to which it seeks indemnification, provided, however, that no reasonable delay on the part of District in notifying Contractor shall relieve Contractor from any obligation unless (and then to the sole extent) Contractor demonstrates that it is thereby actually prejudiced. Contractor shall give prompt written notice to District of any Claim to which it is notified.
	5. No Exclusion: The indemnification provisions contained in this Contract are in addition to, and not in derogation of, any statutory, equitable, or common law remedy that either Party may have for the breach of any representation, warranty, or covenant under this Contract.

**ARTICLE 13**

**MISCELLANEOUS**

* 1. Independent Contractor:
		1. Contractor is an independent contractor of District. This Contract does not create a partnership, joint venture, brokerage agreement, express or implied agency, employment offer or agreement, or any other type of agreement except as expressly provided for herein. Neither Contractor nor its employees are entitled to benefits that District provides to its employees except as may be specifically and expressly set forth herein.
		2. Contractor Compliance With Labor Code §2750.3 (AB5): Contractor is solely responsible for classifying personnel as employees or independent contractors in compliance with Labor Code §2750.3 (AB5). In addition to other indemnification obligations of the Contractor under this Contract, the Contractor shall defend, indemnify, and hold harmless the District from all claims arising out of or relating to the Contractor’s alleged violation of obligations under Labor Code §2750.3.
		3. Contractor shall defend, indemnify, and hold harmless the Indemnified District Parties from and against any and all Claims asserted against the Indemnified District Parties with respect to withholding, Social Security, unemployment compensation, and all other taxes or amounts of any kind relating to employment of any persons providing Services to District under this Contract.
	2. Contracting Authority: Nothing in this Contract will be construed as authority for either Party to incur any indebtedness, enter into any commitment, or order any equipment or inventory in the other Party’s name or on the other Party’s behalf except as expressly authorized by this Contract.
	3. Severability: If any term, provision, or article of this Contract is held unenforceable or invalid under any applicable law or regulation by any court or competent governmental authority having jurisdiction, the non-enforceability or invalidity of such term, provision, or article will not preclude the effectiveness of any other term, provision, or article, but this Contract will be thereafter interpreted as though the particular provision so held to be in violation or invalid were not contained within.
	4. District Approval: Without the prior written consent of the District Representative, Contractor shall not:
* Assign any of its rights and/or duties under this Contract.
* Enter into any lease or other agreement conveying any rights in District property or premises.
* Subcontract any service.
* Grant any right of occupancy or interest in District’s real estate.
* Encumber any interest of District.
* Grant any concessions in any of the Facilities.
* Enter into any agreement with a third-party related to this Contract that extends beyond the term of this Contract.
	1. Ownership and Use of Work Material: Contractor agrees that:
		1. All specifications, plans, computations, data, publications, statements, accounts, reports, studies, and other materials prepared by Contractor exclusively for District (collectively, “Work Material”), whether accepted or rejected by District, becomes the property of District and is for its exclusive use and re‑use at any time without compensation and without any restrictions. District shall not have any proprietary interest in materials prepared by Contractor prior to this Contract or not in connection with the Work Material.
		2. Contractor shall permanently and irrevocably grant and assign to District all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and agrees to cooperate fully with District in any steps District may take to obtain patent, copyright, trademark, or like protections with respect to the Work Material.
		3. Subject to the Confidential Information requirements contained herein, District shall have the right to use the Work Material for Services-related activities or otherwise. District may, at all times, retain the originals of the Work Material.
		4. Work Material will not be used or published by Contractor or any other person or entity unless expressly authorized by District in writing. Contractor shall treat all Work Material as Confidential Information.
	2. No Waiver: No waiver by either Party of any default on the part of the other Party in the performance of any covenant, promise, term, or condition of this Contract will be construed to be a waiver of any other or subsequent default in performance of the same or any other covenant, promise, term, or condition of this Contract, nor bar a Party from insisting on strict performance of the Contract’s provisions.
	3. Exhibits: The Exhibits A through L are incorporated in this Contract to the same extent as if set forth in full herein.
	4. Titles and Captions: The article, section, and subsection titles and captions and the table of contents contained in this Contract are for convenience purposes only. They will not be deemed a part of the Contract and in no way define, limit, extend, or describe the scope or intent of any provisions hereof.
	5. Counterparts/Electronic Signatures: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one Contract binding on the Parties, notwithstanding that both Parties are not signatories to the original or the same counterpart. Signature pages transmitted by facsimile or via email as digital files or by other means of electronic transmission, or bearing electronic signatures, shall have equal force as signature pages bearing original ink signatures.

* 1. Complete Contract: This Contract and the attached Exhibits A through L, all of which are component parts herein, state the entire Contract and understanding between Contractor and District concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. Any and all obligations of District and Contractor are fully set forth and described therein. Any product or service called for in one and not mentioned in the other, or vice versa, is to be provided as if mentioned in said document. The Parties acknowledge that they have not been induced to enter into this Contract by any oral or written representations or statements not expressly contained in this Contract or in the written documents incorporated herein.
	2. Modifications and Changes: Modifications and changes to this Contract will be made only in the following ways:
		1. The Parties may mutually agree in writing to modify this Contract.
		2. District may order changes within the general scope of this Contract at any time by written notice to Contractor. Changes within the scope of this Contract include, but are not limited to, things such as Services to be performed and the delivery or installation of FF&E. Unless urgent in nature, Contractor shall provide a written estimate of costs or savings prior to implementing any changes. Contractor shall be compensated for any additional costs incurred as the result of such order and shall give District a credit for any savings. Such compensation or credit will be determined by mutual agreement of the Parties. In the event that the Parties cannot mutually agree upon such compensation or credit, they will proceed in accordance with the dispute resolution proceedings set forth in Article 15.
	3. Conflict of Interest: Contractor promises and represents that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services described herein. Contractor further promises and represents that in the performance of this Contract, no personnel having any such interest shall be employed by Contractor.
	4. Contractor’s Title to Materials: No materials or supplies for work performed under this Contract will be purchased by Contractor or by any of its subcontractors subject to any lien or chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. Contractor warrants that it has clear title to all materials and supplies used in managing the Facilities and providing the Services.
	5. No Assignment: Contractor shall not assign or transfer any of its rights or responsibilities under this Contract without prior review and written consent of the District Representative. Any assignment or transfer without the District Representative’s prior written consent will be void and have no binding effect upon District. If any portion of the Services that has been subcontracted by Contractor is not executed in accordance with this Contract, the Subcontractor will be replaced on request by the District Representative. No subcontract, assignment, or transfer entered into by Contractor for provision of any Services shall relieve Contractor of any of its liabilities and obligations under this Contract.
	6. Binding Effect: This Contract is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
	7. Limitation of Liability: Notwithstanding anything to the contrary contained in this Contract, neither Party shall be liable to the other Party for any indirect, consequential, exemplary, special, incidental, or punitive damages sounding in contract or tort except as may arise from breach of Section 12.3 (Health Department Violation Indemnification) or Section 13.5 (Ownership and Use of Work Material) above or as may be necessary to provide indemnification in accordance with Article 12, Section 5.11 (Employee Taxes and Benefits), or Section 13.1 (Independent Contractor) above against actions or claims asserted by third parties.
	8. No Personal Liability: All actions or claims against either District or Contractor arising under or relating to this Contract will be made only against such Party as a business entity, and any liability relating thereto will be enforceable only against the assets of such Party, provided each Party warrants its authority to sign on behalf of its business entity.
	9. Testing and Inspection: District reserves the right to conduct any test or inspection it may deem appropriate or advisable to ensure that goods and Services conform to the specifications, terms, and conditions of this Contract.

**ARTICLE 14**

**COOPERATION**

14.1 Cooperation Required: The Parties agree at their own costs to cooperate with each other in connection with any internal investigations by District or Contractor of possible violation of their respective policies and procedures and any third-party litigation, except that District shall not be required to have any contact with any labor union representatives of Contractor’s employees or Subcontractors or participate in any labor union grievance or other proceedings relative to Contractor’s employees or Subcontractors except as a fact witness.

**ARTICLE 15**

**DISPUTE RESOLUTION BETWEEN THE PARTIES**

* 1. Dispute Resolution:

* + 1. Exclusive Mechanism: District and Contractor shall resolve any dispute, controversy, disagreement, or claim arising out of or relating to this Contract, or the breach, termination, or invalidity hereof (each, a “Dispute”) under the provisions of this Article 15. The procedures set forth in this Article 15 shall be the exclusive mechanism for resolving any Dispute that may arise from time to time and are an express condition precedent to litigation of the Dispute.
		2. Good Faith Efforts: A Party shall send written notice to the other Party of any Dispute (“Dispute Notice”). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between the Parties’ executives. If such Dispute is not resolved on an informal basis by the Parties’ executives within thirty (30) calendar days after delivery of the Dispute Notice (or such longer period as may be mutually agreed upon at the time), either Party may initiate mediation as described below.
		3. Non-Binding Mediation:
			1. Subject to having complied with the requirements set forth above, any unresolved Dispute shall be submitted by the Parties to non-binding mediation conducted under the auspices of the Judicial Arbitration Mediation Service (“JAMS”) before resorting to litigation. Mediation will occur in Santa Clara County, unless mutually agreed upon otherwise by the Parties. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. Neither Contractor nor District shall have ex parte communications with any mediator selected under this Article 15 following the mediator’s selection and pending completion of the mediation hereunder. Contractor and District shall equally share the fees and expenses of the mediation, and each shall bear its own expenses incurred in preparing and presenting its own case.
			2. Confidentiality of Mediation: The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by the Parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
		4. Arbitration:
			1. Condition Precedent: The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either Party’s commencement of arbitration proceedings pursuant to Section 15.1.4.3 below; however, neither the mediation provision above nor the arbitration provision below will constitute or be deemed a waiver by either Party of any and all jurisdictional challenges to the claims, including, without limitation, claims that the action is barred by the applicable statute of limitations, California Tort Claims Act, and/or any and all statutory conditions precedent.
			2. Jurisdictional Challenges to Arbitration: The Superior Court of the State of California for the County of Santa Clara shall have sole and exclusive jurisdiction to hear and rule upon all claims, disputes, and/or disagreements arising out of or pertaining to jurisdictional challenges to arbitration including: (i) whether claimant has waived its right to arbitration (Code of Civil Procedure § 1281.2(a)); (ii) whether grounds exist for revocation of the agreement (Code of Civil Procedure § 1281.2(b)); (iii) whether a party to the arbitration agreement is also a party to pending court action or special proceeding with a third party arising out of the same transaction series of related transactions and there is a possibility of conflicting rulings on a common issue or fact or law (Code of Civil Procedure § 1281.2(c)); (iv) whether the claim is time-barred by the applicable statute of limitations; (v) whether the claim is time-barred by the California Tort Claims Act; and/or (vi) whether claimant has failed to satisfy any and all statutory conditions precedent to arbitration.
			3. Arbitration. Subject to a Party’s compliance with the Government Code Claims Process, any Dispute between District and Contractor arising out of or pertaining to this Contract shall be resolved by binding arbitration conducted by a JAMS arbitrator identified as having expertise in public contracts matters and in accordance with the JAMS Streamlined Arbitration Rules and Procedures in effect as of the date that a Demand for Arbitration (“Demand”) is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the San Jose regional office of JAMS. A Demand shall be filed and served within a reasonable time after the occurrence of the Dispute giving rise to the Demand, but in no event shall a Demand be filed or served after the date when the institution of legal or equitable proceedings based upon such Dispute would be barred by the applicable statute of limitations. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. Notwithstanding Rule 19 of JAMS Streamlined Arbitration Rules and Procedures, in any arbitration to resolve a dispute relating to this Contract, the arbitrator’s award shall be supported by law and substantial evidence.
	1. Reserved Rights: Nothing in this Article 15 shall be construed to limit or otherwise affect either Party’s right to terminate this Contract with or without Cause pursuant to the termination provisions contained herein.
	2. Pendency: Subject to Section 15.2 above, Contractor agrees to continue performing the Services during the pendency of any Dispute resolution proceeding, including litigation, arising under this Contract, unless enjoined or prohibited by a court of competent jurisdiction.
	3. Emergency Relief: Nothing in this Contract will be construed to prevent either Party from moving a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other emergency relief to restrain the other Party from releasing Confidential Information to a third party, or seeking to transfer Confidential Information property rights thereto, in contravention of Section 13.5 (Ownership and Use of Work Material) of this Contract. Each Party shall be entitled to assert damage claims in such proceedings.
	4. **WAIVER OF TRIAL BY JURY:**  **EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS CONTRACT, OR THE WORK CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

**ARTICLE 16**

**NOTICES**

16.1 Notices required or given in accordance with the terms of this Contract are to be deemed duly given if personally delivered, sent by nationally recognized overnight courier, sent by electronic mail (“E-mail”) as required below, or mailed by registered or certified mail, postage prepaid with return receipt requested:

To District at:

XXXXXXXXXX

 With a copy to:

 XXXXXXXXXX

To Contractor at:

XXXXXXXXXX

 With a copy to:

 XXXXXXXXXX

Any notice delivered by E-mail under this Contract will be deemed to have been received when sent, provided that no machine-generated message that delivery has failed is returned to the sender.

 Either Party may change its address for notice purposes by giving reasonable written notice to the other Party.

**ARTICLE 17**

**APPLICABLE LAWS AND COURTS**

* 1. Applicable Law: Except as may be preempted by federal law, this Contract is to be governed by the laws of the State of California without regard to California’s conflict-of-laws or choice-of-law principles. Litigation of all disputes between the Parties arising from or in connection with this Contract is to be conducted in the Civil District Court for Santa Clara County or the United States District Court for the Northern District of California.
	2. Interpretation: This Contract has been negotiated at arm's length between the Parties, both of which are sophisticated and knowledgeable in the matters dealt with in this Contract. Accordingly, any rule of law, doctrine of contract interpretation, or legal decision that would require ambiguities in this Contract to be interpreted against the Party that drafted it are not applicable and are hereby waived.

**ARTICLE 1****8**

**REPRESENTATIONS AND WARRANTIES**

* 1. Contractor Representations and Warranties: Contractor hereby represents and warrants to District that as of the Effective Date, the following representations and warranties are true and will remain so throughout the Term of this Contract.
		1. Contractor is duly organized, validly existing, and in good standing under the laws of the state of its incorporation and is duly authorized and in good standing to conduct business in the State of California.
		2. Contractor has the requisite power and authority to execute and perform its obligations under this Contract and knows of no reason why Contractor is in any way, physically, legally, or otherwise, precluded from performing its obligations under this Contract in accordance with its terms, including without limitation, those relating to health and safety.
		3. Contractor is not suspended, debarred, or otherwise disqualified from entering into any contract with the State of California, any other state, or the federal government, and is not currently under suspension or debarment by the State of California, any other state, or the federal government.
		4. The execution and delivery of this Contract and the consummation or performance of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Contractor, written evidence of which shall be delivered to District, in form satisfactory to District. This Contract constitutes the legal, valid, and binding agreement of Contractor, enforceable against Contractor in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors’ rights generally, or by principles governing the availability of equitable remedies).
		5. Contractor has obtained and shall continue to maintain throughout the Term of this Contract all required insurance and applicable permits, rights, licenses, and other authorizations required for it to perform its obligations under this Contract without restriction. Contractor shall not perform any Services for which it is not appropriately licensed.
		6. Contractor is financially solvent.
		7. The execution and delivery of this Contract and the consummation of the transactions contemplated hereby and the performance of the obligations set forth herein do not (i) conflict with or result in a violation of any provision of the charter or bylaws of Contractor, each as amended to date; (ii) conflict with, result in a violation or breach of, constitute a breach or default under, give rise to a right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract, or other instrument to which Contractor is a party or by which any of its properties or assets are or may be bound; or (iii) violate any order, writ, injunction, decree, statue, rule, or regulation applicable to Contractor.
	2. District Representations and Warranties: District hereby represents and warrants to Contractor that as of the Effective Date, the following representations and warranties are true and will remain so throughout the Term of this Contract:
		1. District has the requisite corporate power and authority to execute and deliver this Contract and to perform its obligations hereunder.
		2. This Contract constitutes the legal, valid, and binding agreement of District, enforceable against District in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors’ rights generally, or by principles governing the availability of equitable remedies).
		3. District has obtained or will timely obtain all applicable permits, rights and licenses required to perform its obligations under this Contract.
		4. The execution and delivery of this Contract and the consummation of the transactions contemplated hereby will not (i) conflict with or result in a violation of any provision of the charter or bylaws of District, each as amended to date; (ii) conflict with, result in a violation or breach of, constitute a default under, give rise to a right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract, or other instrument to which District is a party or by which any of its properties or assets are or may be bound; or (iii) violate any order, writ, injunction, decree, statue, rule, or regulation applicable to District.
	3. Survivability: Contractor’s warranties shall survive termination of this Contract and shall not be deemed waived by District because of delivery or acceptance of, or payment for, the Services.

**ARTICLE 19**

**CONFIDENTIAL INFORMATION AND PROTECTED MARKS**

* 1. Confidential Information: During the Term, the Parties may be exposed to each other’s Confidential Information. Consequently, each Party agrees:
		1. To allow access to Confidential Information only by individuals (including without limitation professional advisers and consultants) on a need-to-know basis solely in conjunction with their respective responsibilities under this Contract.
		2. Not to use or disclose the other Party’s Confidential Information without the prior written consent of such Party, except as expressly permitted hereby.
		3. To take commercially reasonable precautions to protect the other Party’s Confidential Information, exercising at least the same degree of care to safeguard and to prevent disclosure to others as it employs to avoid unauthorized disclosure or publication of its own information, but not less than a reasonable standard of care.
		4. To comply with all applicable regulations or laws governing Confidential Information.
		5. To return the other Party’s Confidential Information upon the Completion Date, if requested by such Party, keeping no copies except for those archived as part of regular system backups.
		6. If a Party is compelled by law, subpoena, or otherwise to release or allow disclosure of the other Party’s Confidential Information, the releasing Party shall provide written notice of same to the non-releasing Party sufficiently far in advance to allow the non-releasing Party a reasonable opportunity to contest said release/disclosure. The releasing Party shall use commercially reasonable efforts to immediately mitigate or resolve any security incident at its expense and in accordance with applicable privacy rights, laws, regulations, and standards.
	2. Confidentiality of Information Related to This Contract: The Parties agree that the terms and conditions of this Contract are confidential and shall not disclose the terms and conditions to any third party without prior written approval of the other Party. The Parties may disclose the existence of the relationship between the Parties. Exclusions to this confidentiality requirement include Confidential Information that: (i) is in recipient's possession at the time of disclosure as shown by recipient's files and records immediately prior to the time of disclosure; (ii) before or after it has been disclosed to recipient, becomes part of the public knowledge or literature, not as a result of any action or inaction of recipient in breach of this Contract; (iii) is approved for release by written authorization of the disclosing Party; (iv) is disclosed to recipient by a third party not in violation of any obligation of confidentiality under this Contract; (v) is independently developed by recipient without reference to Confidential Information; or (vi) is required to be disclosed by order during the course of a judicial or regulatory proceeding or as required by a government authority.
	3. Protected Marks:
		1. District Marks: Contractor acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to District or its Affiliates (collectively “District Marks”) are proprietary to District, and Contractor shall not use District Marks for any purpose except and solely as expressly permitted in writing by District in advance of said use. Upon termination of this Contract, Contractor shall (i) immediately and permanently discontinue the use and display of any District Marks and make or cause to be made such changes as District shall reasonably direct so as to effectively discontinue the use of District Marks and (ii) immediately deliver to District all goods bearing any District Marks. Any expense incurred by Contractor relating to its compliance with this Section 19.3.1 will be borne by Contractor.
		2. Contractor Marks: District acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to Contractor or its Affiliates (collectively “Contractor Marks”) are proprietary to Contractor and District shall not use Contractor Marks for any purpose except and solely as expressly permitted in writing by Contractor in advance of said use. Upon termination of this Contract, District shall (i) immediately and permanently discontinue the use and display of any Contractor Marks and make or cause to be made such changes to the Facilities as Contractor shall reasonably direct so as to effectively distinguish the Facilities from its former appearance, and (ii) immediately remove and deliver to Contractor all goods bearing any Contractor Marks.

**ARTICLE 20**

**SURVIVABILITY**

* 1. Survivability: Termination as allowed for under this Contract does not relieve Contractor or any of its employees from liability for violations of this Contract or any other act or omission of Contractor. No expiration or termination of this Contractor relieves either Party of any obligations under this Contract that by their nature survive expiration or termination, including, without limitation, Sections 3.27 (Pass Through Warranties and Third-party Products and Services), 5.11 (Employee Taxes and Benefits), 5.25 (Nonsolicitation), 13.1 (Independent Contractor), 13.5 (Ownership and Use of Work Material), and 18.1 (Contractor Representations and Warranties), and Articles 10 (Insurance), 12 (Indemnification), 15 (Dispute Resolution Between the Parties), 17 (Applicable Laws and Courts), and 19 (Confidential Information and Protected Marks).

**ARTICLE 21**

**CONFLICT OF TERMS**

21.1 Conflict of Terms: In the event there is any conflict or inconsistency between the terms and conditions of this Contract and any exhibit incorporated herein, the terms and conditions of this Contract will control and govern the rights and obligations of the Parties.

(The remainder of this page is left blank intentionally. Signatures are on the next page.)

**\* \* \* \* \* \***

IN WITNESS WHEREOF, this Contract has been duly executed by and on behalf of the Parties hereto as of the Effective Date.

WEST VALLEY–MISSION COMMUNITY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COLLEGE DISTRICT

(“District”) (“Contractor”)

By: By:

Name: Name:

Title: Title:

Date: Date:

EXHIBIT A

West Valley-Mission Community College District’s REQUEST FOR PROPOSAL FOR DINING SERVICES MANAGEMENT (#11-2425) dATED september 23, 2024, and the Questions and answers from the District dated \_\_\_\_\_\_\_\_\_\_\_\_, 2025

(insert final rfp AND ALL ADDENDUMS that wERE released to respondents)

EXHIBIT B

Contractor’s responseS to DISTRICT’S REQUEST FOR PROPOSAL (RFP #11-2425)

(INSERT SUCCESSFUL RESPONDENT’S PROPOSAL AND ALL SUPPLEMENTAL SUBMITTALS)

EXHIBIT C

DINING SERVICES OPerating schedule

(TBD; Will be determined during negotiations)

EXHIBIT D

DISTRICT’S CONTRACT MANAGEMENT table of organization

(tbd; to be prepared by district for both campuses)

EXHIBIT E

FINANCIAL AND OPERATIONAL RESPONSIBILITIES SUMMARY

(TBD; Will be determined during negotiations)

 EXHIBIT F

PERFORMANCE ASSURANCE SCORECARD

(TBD; Will be determined during negotiations)

EXHIBIT G

INITIAL INVENTORY OF DISTRICT-OWNED FURNITURE, FIXTURES, AND EQUIPMENT

(tbd; To be prepared by district for both campuses)

EXHIBIT H

LIST OF CONDITIONS TO BE REMEDIED BY DISTRICT

(TBD; Will be determined during transition inspectsions)

EXHIBIT I

CAPITAL INVESTMENTS MADE BY CONTRACTOR AND AMORTIZATION SCHEDULE

(TBD; Will be determined during negotiations)

EXHIBIT J

AREAS IN THE FACILITIES TO BE CLEANED BY CONTRACTOR

(TBD; Will be determined during negotiations)

EXHIBIT K

DISTRICT’S INFORMATION TECHNOLOGY POLICY

(INSERT POLICY TO THE EXTENT IT APPLIES TO CONTRACTOR’S RESPONSIBILITIES)

EXHIBIT L

DISTRICT’S Funding of student meal plans

(INSERT schedule, amounts, and policies regarding meal plan dispursements)