

FOOD SERVICES AGREEMENT

[SAMPLE DO NOT SIGN]

THIS AGREEMENT by and between MERCED COMMUNITY COLLEGE DISTRICT (hereafter District) (hereafter Contractor) is entered into with a mutually agreed upon effective date of July 1, 2024.

The District is authorized by Education Code Section 88004.5 to contract with food services management consulting firms and requires such food and beverage services. Contractor is specially trained, experienced and competent to perform all required and necessary services of food and beverage items.

The Contractor represents that it has the qualifications and ability to perform the food and beverage services in a professional manner, without the advice, control, or supervision of the District. The Contractor's services will be performed, findings obtained, reports and recommendations prepared, if any, in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

In consideration of the mutual promises and covenants contained in this document, the District and Contractor agree as follows:

ARTICLE I - SCOPE AND RESPONSIBILITIES:

1.1 Purpose: This Agreement sets forth the terms and conditions under which the District retains the Contractor to manage and operate the District's food service operations solely for the use of students, staff, invited guests and other persons designated by the District.

1.2 Scope: Contractor shall provide its services and expertise to the District for the total operation of the institution's food services programs (excluding vending) at the Merced and the Los Banos Campus. Accordingly, the Contractor shall purchase, prepare and serve food or food products, and beverages (NOTE THAT MERCED COLLEGE IS AN EXCLUSIVE PEPSI CAMPUS, subject to change) in the District's Merced Cafeteria. Food shall be prepared in accordance with standard menu and nutritional requirements as directed by the District and in compliance with all provisions of law relating to health and cleanliness standards. The District reserves to itself the right and responsibility to review menus as to nutritional value and appropriateness. Sufficient quantities of menus shall be printed to allow posting at locations directed by the Vice-President of District Administrative Services. The Contractor shall be responsive in its formulation of menus to such special dietary and ethnic food requirements as the District may designate; special holiday and theme menus shall be served at appropriate times of the school year or as designated by the District.

1.3 Instructional Use: The District uses the Cafeteria as an instructional laboratory for courses through the Food and Nutrition of the Business Division. The Contractor agrees to support the District's instructional objectives in this regard; responsibility for overall operation remains with the Contractor's manager, under the general direction of the Vice-President of District Administrative

Services. Close cooperation with the appropriate instructional offices will be expected requirement at this time for EOP&S student meal ticket program to be provided by the Contractor. The Contractor may negotiate with other programs to issue coupons or tickets as deemed necessary to expedite the flow of customers through the serving and payment lines.

1.4 Management: Recognizing that competent management of the food services operations of the District is essential to the success of such operation, the District and Contractor agree that selection and hiring of new staff by the Contractor shall be subject to review and acceptance by the District and that all staff shall undergo the necessary health and security checks required while working in an academic food environment.

ARTICLE II - TERM

2.1 It is the desire of both the District and Contractor to enter into a business relationship. To attain this objective, the following are mutually agreed upon:

2.1.1 The term of this Agreement shall be for a period one (1) year. The District shall consider each renewal on a year-to-year basis. Termination of the Agreement during the initial term or any renewal term shall be as otherwise provided in this Agreement.

2.1.2 Fiscal terms and arrangements are covered in Article III of the Agreement.

2.2 Termination for Convenience: The District and Contractor shall at all times have the option of terminating the contractual agreement by the giving of ninety (90) days written notice of intent to terminate.

2.3 Termination for Cause: Either party may terminate this Agreement immediately for cause. Cause shall include, without limitation, a material violation of this Agreement by either party or if a party becomes insolvent or if Vendor fails to pay commission in a timely manner.

ARTICLE III - FISCAL

3.1 For the purpose of this agreement net revenue is defined as Contractor's gross annual sales from cafeteria, catering, conference, and other sales and services, excluding sales tax. During each year of this Agreement the Contractor shall pay monthly to the District an amount equaling FOUR PERCENT (4.0%) of that portion of the gross student and staff sales and TWELVE PERCENT (12.0 %) of catering sales. All payments to the District shall be in U.S. dollars. This specific clause shall be subject to re-negotiation at the end of each fiscal year during the term of the Agreement. The Contractor shall provide monthly financial statements to the District's Director of Business Services for review and audit, and in such a format as to allow for verification of sales in the areas called out above. The Contractor understands that this contract does not include vending machine sales and agrees that all items related to vending machine sales shall be at the sole discretion of the District or its assign. Incentives for a successful food services operation the Contractor agrees to fund annually the following District functions: (1) The Student Scholarship Award in the amount of One

Thousand Five Hundred DOLLARS (\$1,500.00) (2) Presidential Meeting Allowance in the amount of One Thousand Two Hundred DOLLARS (\$1,200.00) and (3) Support of the District Foundation in the amount of One Thousand Two Hundred DOLLARS (\$1,200.00).

3.1.2 To promote relations and the spirit of collegiality with students on campus the contractor agrees to participate in two college-wide events during the year (e.g. Home Coming and the student body Spring Fling).

3.1.3 Student groups will be allowed to host fundraising events through the sale of food and beverages. Hosting student group must obtain all required health permit and follow all codes, laws and regulations.

3.2 The Contractor shall be responsible for the collection and payment of all taxes on cash and charge sales, except where the customer is able to provide evidence of a valid tax exemption.

3.3 Purchasing Practices: In order to assure that prices for the student and staff populations of the District remain as low as industry standards permit, the Contractor shall make every attempt to purchase all foods, supplies and/or equipment as competitively as possible without sacrificing quality. No District involvement in the purchasing process is contemplated; the District, however, reserves to itself the right to inspect lists for price comparison purposes.

3.4 Prior to the expiration or termination of the Agreement, the Contractor will, with the cooperation of District staff, conduct an inventory of foodstuffs on hand. Goods thus acquired will be reimbursed to the Contractor by the District at the market value at that time, less any discounts, rebates or other applicable credits received by the Contractor on those Goods. Additionally, an inventory of capital equipment will be conducted at the time of such termination, shortages, if any, of District-owned equipment at that time will be negotiated for reimbursement at the depreciated value of the equipment at that time.

ARTICLE IV - PRICING AND SCHEDULING

4.1 The Contractor shall perform and operate on a schedule to be approved by the District. The needs of the District's school calendar shall prevail over any conflicting schedules such as private catering or conference activities. When not in conflict with school scheduling, the District encourages the Contractor's support of catering and conference activities. In addition, the Contractor has the exclusive right to provide food services including catering for all such District events unless by mutual agreement Contractor is unable to satisfactorily conduct or adequately manage such event.

4.2. In the spirit of shared governance the District and Contractor shall assemble a Food Service Committee representative of the District body and the Contractor's management. The Committee will meet regularly and will focus on service, quality, and revenue. Recommendations from the Committee shall be forwarded to Administration for approval.

4.3 The Food Service Committee shall provide to the District's Vice President of Administrative Services its recommendations regarding menu pricing for breakfast, lunch, and dinner menus.

Pricing shall be subject to continuing review and approval by the District. District decisions on price changes shall be made without delay upon presentation of acceptable reasons for such changes.

5.1 The District shall provide the Contractor, with facilities for food and beverage services, including adequate dry, refrigerated and freezer storage areas, and sanitary toilet facilities for employees. Office space for the Contractor's Service Manager will be provided adjacent to the Cafeteria area. Except as may be specified in writing by the Contractor prior to the effective date of this Agreement, the facilities and equipment provide by the District shall be deemed to be complete, operable and adequate for effective performance under this Agreement.

5.2 The Contractor may provide and install, at no expense to the District, additional equipment after first receiving written approval of the District's Director of Facility Development. Equipment so provided by the Contractor shall remain the property of the Contractor, regardless whether said property is attached or affixed to the real property owned by the District. The Contractor shall have the right to remove, or upon the District's request, sell to the institution at fair market value such equipment within thirty (30) days after expiration or termination of this Agreement subject to other provisions of the Agreement. If Contractor removes any property attached or affixed to the District's real property, Contractor shall ensure the District's property is restored and returned to the District in its original condition prior to the commencement of any and all agreements with Contractor with no damage thereto, reasonable wear and tear accepted.

5.3 The District shall have the right to install any needed equipment or to make alterations to the facilities in a manner compatible with existing facilities. The District and Contractor shall each be responsible for compliance with all federal, state and local health and safety regulations for facilities and space over which that party has operating control.

5.4 The Contractor may perform emergency maintenance and repairs on the equipment provided by the District. The District shall reimburse the Contractor for such costs if the District would otherwise have had the responsibility for such repairs; the District will not reimburse the Contractor is such maintenance and repairs are needed due to the Contractor's negligence, willful misconduct, or misuse of the equipment.

5.5 In the event of termination or expiration of the Agreement, the Contractor, shall allow its successor (or the District designee) reasonable access to the premises during the thirty (30) days immediately preceding the expiration date of the Agreement.

5.6 The Contractor shall, as a direct cost of operation, maintain standards of housekeeping and sanitation in areas under its responsibility to the satisfaction of the District and governmental authorities, including the requirements of the CAL/OSHA, Education Code section 88004.5, subdivision (c), and local health authorities. Cleaning and sanitation of the food preparation and immediate service areas are the responsibility of the Contractor; custodial services provided by the District do not include these areas. Failure on the part of the Contractor to maintain an acceptable city or state health department rating shall constitute a default on the part of the Contractor and shall give the District the right to terminate the Agreement upon the giving of ten (10) days written notice.

5.7 The District assumes the responsibility for the painting of walls and ceilings, cleaning of Venetian blinds, carpeting, draperies, and windows.

5.8 Access: the District shall have full access at all times to the food service and preparation areas, office space for the Contractor's Service Manager, and equipment with or without prior notice.

ARTICLE VI -OPERATIONAL COSTS RESPONSIBILITIES

6.1 The Contractor shall assume the cost and expense of the food service operation in the following areas:

6.1.1 Foodstuffs

6.1.2 Supplies, including cleaning supplies

6.1.3 Labor- Including all personnel directly involved with food service operation

6.1.4 Uniforms

6.1.5 Table linen

6.1.6 Telephone charges

6.1.7 Printing and stationery supplies

6.1.8 Flowers, candles and other decorative items

6.1.9 Bookkeeping and payroll preparation for the Contractor staff

6.1.10 General supervision

6.1.11 Liability insurance

6.1.12 Pest control in kitchen and food preparation areas. These areas to remain pest free at all times.

6.2 The Contractor is responsible for the following specifics regarding cleanliness and maintenance:

6.2.1 Daily cleaning and housekeeping of the food service, preparation, and service areas in Contractor's care and control, and washing of all trays, dishes, glassware, and utensils in accordance with accepted industry and local health standards. The deep cleaning of the food preparation and presentation areas and kitchen equipment will be performed, at a minimum, once a week.

6.2.2 Prompt cleaning of all service area furnishings, including dining area and lounge tables and chairs, so that they are clean, neat and orderly at all times. All spills on floors and tables shall be cleaned up immediately.

6.2.3. Nightly sweeping and damp-mopping of floors and general cleaning of the kitchen and preparation areas in the Contractor's care and control.

6.2.4 Emergency maintenance of District-owned and installed kitchen equipment. The Contractor may pay these costs outright and then bill the district or the billings may be referred to the Director of Maintenance for payment. The District will reimburse the Contractor if such maintenance is needed

due to the Contractor's negligence, willful misconduct, or misuse of the equipment.

6.3 The following shall be the responsibility of the District:

6.3.1 Window cleaning - outside.

6.3.2 District owned equipment repair and replacement (except where such repair and replacement are caused by the Contractor's negligence, willful misconduct, or misuse of the equipment.

6.3.3 Painting and redecorating.

6.3.4 Fire insurance.

6.3.5 Outside maintenance.

6.3.6 Pest control in the general building areas.

6.4 The District's responsibilities per Article 6.3 are expanded to include the following:

6.4.1 Removal of garbage and trash from the area designated by the Director of Operations.

6.4.2 Mopping scrubbing, and buffing of floors, and cleaning windows and walls, commonly referred to as "heavy cleaning".

6.4.3 Heavy maintenance, including cleaning of all duct work when necessary.

6.4.4 Placement of light bulbs and periodic cleaning of light fixtures.

6.4.5 Pest control, to include extermination services as requested by the Contractor's Manager.

ARTICLE VII - PERSONNEL

7.1 The Vendor shall assign a full-time qualified manager, employed directly by the company (**no subcontractors are permitted in any location**), interviewed and approved by the District who shall be responsible for efficient operation of all food service and catering. The manager shall be "on call" and shall be responsible for operations of the Vendor under the Contract. The Vendor must provide contact information for local, management who will be "on call" at all times to address needs as they arise.

7.2 The Vendor shall, at all times, maintain an adequate staff of employees on duty to assure efficient operation and will provide proper supervision. Only employees acceptable to the District will be assigned for duty. The Vendor will require their employees to comply with instructions pertaining to conduct and building rules and regulations. The Vendor shall provide its employees with proper instruction and training in customer relations and functional job related skills. The Vendor agrees to employ, train and promote as much student labor as practical in its operations, provided that the Vendor shall determine, in its sole discretion, the amount of such student labor that it may practically train and employ. The Vendor shall be responsible for providing food handler certificates and/or another other

licensing/certifications as required by law and shall make such records available for review upon the District's request.

7.3 The Vendor shall not use the name of the District or colleges in any way, including on paper cups, paper plates, napkins, matches, vehicles or condiments unless approved in writing by the District. All design, advertising and lettering of textile or paper goods shall be subject to approval by the District.

7.4 The Vendor agrees to comply with any and all rules and regulations of the District, now or hereafter promulgated, regarding food or catering services. The District reserves the right to make and enforce such reasonable rules and regulations as in its judgment may be necessary or advisable from time to time to promote safety, care and cleanliness in the food service areas.

7.5 Student Personnel: the Contractor shall make available work opportunities for District students while assuring that such employment shall not deprive regular employees of work time.

7.6 Solicitation Hiring: During the term of this Agreement and for a period of two years following its termination, neither District nor its successors or assigns, shall employ, or seek to employ, any supervisory or management person employed by Contractor who participated in providing the food services under this Agreement. Contractor represents that its management employees have acquired special knowledge, skills and contacts as a result of being employed with and trained by Contractor. If District hires, makes any agreement with, or permits employment of, any such employee, within the restricted period of time, and without the written consent of Contractor, District agrees that Contractor shall suffer damages and District shall pay Contractor a liquidated sum equal to two and one half times the annual compensation for each such person hired. This paragraph 7.6 shall survive the termination of the agreement.

ARTICLE VIII -TERMS AND CONDITIONS

8.1 Insurance: the Contractor shall obtain and keep in force during the term of this Agreement, for the protection of the District and the Contractor, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of not less than One Million Dollars (\$1,000,000) including but not limited to Personal Injury Liability, Broad Form Property Damage Products Liability, Blanket Contractual and Product Liability, covering only the operations and activities of the Contractor under this Agreement, and shall deliver a certificate evidencing such coverage to the District within thirty (30) days after the execution of this Agreement.

The Contractor shall obtain and keep in force during the term of this Agreement, for the protection of the District and the Contractor, Commercial General Automobile Liability Insurance for bodily injury, including death, and property damage that provides total limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned, and hired vehicles, and shall deliver a certificate evidencing such coverage to the District within thirty (30) days after the execution of this Agreement.

The Contractor shall obtain and keep in force during the term of this Agreement, for the protection of the District and the Contractor, Employer's Liability insurance that provides total limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and shall deliver a certificate evidencing such coverage to the District within thirty (30) days after the execution of this Agreement.

The insurance policy or policies shall contain a covenant by the issuing company that they shall not be canceled unless a thirty (30) day prior written notice of cancellation is provided to the District. In addition, excess liability (umbrella) coverage of not less than Five Million Dollars (\$5,000,000) per occurrence and an equal amount in aggregate must be provided.

Insurance is to be placed with insurers with a current A.M. Best's Rating of no less than A:VII, unless otherwise acceptable to the District.

8.1.1 Worker's Compensation Insurance: Since the Contractor's Manager is not a District employee, a certificate must be provided to the District certifying that the Contractor carries Workmen's Compensation Insurance in amounts required by state and local statute. Statutory limits are \$1,000,000 each accident, \$1,000,000 policy limit (disease) and \$1,000,000 each employee (disease).

8.1.2 Fire Insurance: District will carry adequate fire and extended coverage insurance and, as covered in clauses following, will waive any and all rights of recovery from the Contractor for loss covered by perils defined in fire, extended coverage and sprinkler leakage policies.

8.3 Indemnity: To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Contract, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

8.4 Assignment: This Agreement may not be assigned by the Contractor in whole or in part without the written consent of the District.

8.5 Notices: Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be either served personally or otherwise delivered to the other party as follows:

Accounting:

9.1 The Vendor shall be responsible for collection, retention and accounting of all monies from sales in the food service operation. The Vendor shall maintain financial procedures and record-keeping in accordance with generally accepted accounting principles and shall make said financial records and supporting documents available for inspection, reproduction and audit by the District at its request.

9.2 The Vendor shall maintain separate records and shall remit to the District monthly payments or commissions by the fifteenth (15th) of the month following the close of each month. The District expects the Vendor to use a modern networked cashiering system and provide itemized receipts to the customer. Further, the District expects access to reports that show peak and slow hours and all sales data.

9.3 The accounting period for the operation of food services shall be a fiscal year July 1 - June 30, and all accounting records and statements will be based upon that period. The Vendor shall supply the District with a Profit and Loss Statement, and copies of audited annual financial statements.

9.4 **LATE FEE:** If payment is not received within 45 days, or due date, there will be a late fee of 10%. For continued failure to pay commission on due date, may result in termination of contract.

Notices to the District:

Merced Community College District

Attn: Charles Hergenraeder, Director, Purchasing & Risk Management

3600 M Street

Merced, CA 95348

Notices to Contractor:

8.6 Catastrophe: With the exception of payment obligations for prior performance under this Agreement, neither the Contractor nor the District shall be liable for the failure to perform their respective obligations when such failure is caused by fire, explosion, water, act of God or inevitable accident, civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, weather and energy related closing, governmental rules or regulations, or like causes beyond the reasonable control of such party.

8.7 Rights beyond Termination: The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.

8.8 Entire Agreement: This Agreement constitutes the entire agreement between the parties, and supersedes all understandings, offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

Dated this July 1, 2024 in the City of Merced, County of Merced, California, which shall be the effective date of this Agreement, and shall be effective for one (1) year from this date unless Agreement is renewed or is terminated under provisions stated elsewhere in the Agreement.

District	Contractor
MERCED COMMUNITY COLLEGE DISTRICT	[Insert contractor name here]
By: _____	By: _____
Date: _____	Date: _____
Name: Joe Allison	Name: _____
Title: Vice President of Administrative Services	Title: _____