

**The City College  
Auxiliary Enterprises Corporation**

**REQUEST FOR PROPOSALS**

**FOOD SERVICE**

Required Campus Visit: Thursday January 15<sup>th</sup> 2015, 10:00 am

Proposal Due Date and Time: Friday February 27<sup>th</sup>, 2015 5:00 pm

**TABLE OF CONTENTS**

**INSTRUCTIONS TO PROPOSERS**

<u>Section</u>	<u>Page Number</u>
1 Introduction	4
2 Important Dates, Addresses and Contact Information	5
3 General Proposal Requirements	6
4 Contents of Technical and Financial Proposal	8
5 Modifying Your Proposal	11
6 Withdrawing Your Proposal	11
7 Proposal Evaluation	12
8 Reservation of Rights	12
9 General Proposal Conditions	14

**EXHIBIT A – DESCRIPTION OF COLLEGE**

**EXHIBIT B - FOOD SERVICE LOCATIONS**

**EXHIBIT C - COLLEGE CALENDAR**

**EXHIBIT D - SCHEDULE OF FOOD SERVICE OPERATIONS**

**EXHIBIT E - PAST SALES STATISTICS**

**EXHIBIT F – LIST OF COLLEGE-OWNED EQUIPMENT**

**FORM 1 - PROPOSER QUESTIONNAIRE AND CERTIFICATION OF PROPOSAL**

**FORM 2 - PRICE AND PORTION SHEET**

**FORM 3 – SUMMARY OF FINANCIAL PROPOSAL**

**FORM 4 – FOOD SERVICE OPERATIONS CONTRACT**

## INSTRUCTIONS TO PROPOSERS

### Section 1 - INTRODUCTION

- 1.1 General.** This RFP covers the management and operation of certain food services at The City College of New York of The City University of New York. It is issued by The City College Auxiliary Enterprises Corporation (“Corporation”). In this RFP references to “we”, “us” or “our” mean the Corporation, and references to “you” or “your” mean each and every respondent to this RFP.
- 1.2 Objective.** Our objective is to provide the College community with a full range of fresh, nutritious, affordable, and tasty food and beverages through the management and operation of dining rooms, cafeterias, catering services, and related activities, as further described in this RFP (“Food Service Operations”).
- 1.2.1 We are looking for a relationship that will distinguish itself with high value and satisfaction and be viewed as successful by both parties as well as the College community. The successful proposer is expected to be an integral part of the College campus. We will favorably consider proposals that reflect the characteristics of the College and consider its particular needs.
- 1.2.2 We encourage proposals that include kiosks and/or satellite operations in new locations on the campus that may provide greater convenience and increased volume.
- 1.2.3 We are particularly interested in providing variety to those who dine on campus regularly. You should take into account the tastes and needs of the College’s diverse population, including its many international students and those with vegetarian, vegan, halal and kosher diets. Members of our campus community are also advocates for issues that may relate to Food Service Operations, such as environmental, agricultural, labor, and trade policies.
- 1.3 Rights to be Granted.** The company we choose, if any, will be granted a license with the following rights and responsibilities, which are described in greater detail in the Contract attached as Form 4 to this RFP:
- 1.3.1 the exclusive right and responsibility to provide retail food service in the locations described on Exhibit B; and
- 1.3.2 The non-exclusive right to provide catering for College events.
- 1.4 Exclusions and Exceptions.**
- 1.4.1 **This RFP does not cover vending machine operations.**

- 1.4.2 This RFP does not cover the sale of food and/or beverages in the College bookstore or, except for catering, in any other location not listed on Exhibit B. The Corporation and the College reserve the right to enter into agreements with other vendors regarding the sale of food and/or beverages in these other locations.
- 1.4.3 The College Student Government, the College Student Association, recognized College student organizations, and College classes studying food preparation, technique or related subjects will retain the right to conduct food demonstrations, sampling, bake sales and other temporary sales or distribution of food or beverages on the College campus.
- 1.4.4 The Corporation, the College and other organizations or groups affiliated with the College will retain the right to occasionally use the locations listed on Exhibit B during the Food Service Operations Contractor's non-operational hours.
- 1.5 Pouring Rights Contract.** The City University of New York is a party to an agreement with Pepsi-Cola Bottling Company of New York, Inc. that governs the brands of non-alcoholic beverages sold at the College. The terms of this "pouring rights" contract will take precedence over any conflicting terms in the Food Service Operations Contract and, among other things, will require Contractor to serve or offer for sale only beverages permitted by the pouring rights contract, and, with very limited exceptions (i.e., non Pepsi-Cola products permitted under the pouring rights contract), to purchase such beverages from Pepsi-Cola Bottling Company of New York, Inc. For the avoidance of doubt, when providing Food Service Operations, Contractor is not permitted to purchase Pepsi-Cola products from a beverage supplier other than Pepsi-Cola Bottling Company of New York, If you are awarded the Food Service Operations Contract, you must abide by the terms of the pouring rights contract, or any successor to it, when providing Food Service Operations.
- 1.6 Term of Contract.** We anticipate that the term of the Food Service Operations Contract will be five years with two 2-year renewal options. However, we are willing to consider a longer initial term depending in part on the capital investment aspects of the winning proposal. We recognize that extensive renovation will require capital outlay by the winning company, and are willing to structure the term so as to permit the company to recoup its investment.
- 1.7 Security Bond.** If you are awarded the Contract and included capital improvements over \$200,000 as part of your proposal, you will be required to provide performance and payment bonds in addition to the other performance security required by the Contract.
- 1.8 Exhibits.** The following Exhibits are attached and a part of this RFP:
- Exhibit A - Description of College
  - Exhibit B - Food Service Locations

- Exhibit C - College Calendar
- Exhibit D - Schedule of Retail Food Service Operations
- Exhibit E - Past Sales Statistics
- Exhibit F – List of College-owned Equipment

*You must meet all of the requirements of Sections 2 through 4 below (“Requirements”) on or before the Proposal Due Date and Time listed in Section 2.1. We reserve the right to determine that you have substantially met the Requirements and/or to ask for additional information.*

**Section 2 - IMPORTANT DATES, ADDRESSES AND CONTACT INFORMATION**

**2.1 Important Dates.**

<b>Event</b>	<b>Date</b>	<b>Time</b>
Release of RFP	December 30 <sup>th</sup> , 2014	3:00 P.M.
Required Campus Visit	January 15 <sup>th</sup> , 2015	10:00 A.M.
Question Submission Deadline	January 23 <sup>rd</sup> , 2015	5:00 P.M.
Projected Date of Response to Questions	January 30 <sup>th</sup> , 2015	5:00 P.M.
Proposal Due Date and Time	February 27 <sup>th</sup> , 2015	5:00 P.M.
Projected Date of Contractor Selection	March 27 <sup>th</sup> , 2015	5:00 P.M.

**2.2 Campus Visit.**

2.2.1 The Campus Visit is mandatory. The location of the Campus Visit is:

The City College of New York  
 NAC Building Room 1/210B  
 160 Convent Avenue  
 New York, NY 10031

2.2.2 Please confirm your attendance no later than 24 hours before the Campus Visit by contacting **Jason Wallace** at **212-650-7034** or **jwallace@ccny.cuny.edu**.

2.2.3 One purpose of the Campus Visit is for you to see the campus and ask questions about the scope of the Food Service Operations contract and the conditions under which it will be performed. If you don't investigate the existing conditions and later learn of something that could adversely affect performance of Food Service Operations and which a reasonably

prudent person would have discovered earlier, you will still be responsible for any obligations you may have with respect to this RFP or to the Food Service Operations Contract, if awarded to you.

## **2.3 Contact with Corporation and Questions.**

2.3.1 You must direct all your communications regarding this RFP to the “Authorized Contact”, unless this RFP specifically provides otherwise. Do not contact anyone else at the Corporation, the College or CUNY. The Authorized Contact is:

Jason Wallace  
The City College of New York  
NAC Building Room 1/210B  
160 Convent Avenue  
New York, NY 10031  
jwallace@ccny.cuny.edu

2.3.2 If you have any questions about this RFP, including requests for interpretation or correction, send them to us before submitting your proposal. Send all questions, in writing, and by the Question Submission Deadline listed in Section 2.1, to the Authorized Contact.

2.3.3 We will respond to your questions and issue any clarifications and amendments to the RFP we deem necessary, in the form of written Addenda to this RFP. We will send Addenda to proposers by mail, e-mail, facsimile or courier. We are not responsible if you fail to receive an Addendum.

2.3.4 Addenda are a part of this RFP, and are binding on you whether or not you receive them. We encourage you to verify with the Authorized Contact that you have received all Addenda before submitting your proposal. Only answers, clarifications and amendments we give in a written Addendum are binding on us. We are not responsible for the correctness of information given orally.

## **2.4 Submission of Proposal.**

2.4.1 We must receive your proposal on or before the Proposal Due Date and Time listed in Section 2.1 at the following address:

North Academic Center Room 1/210B  
ATTN: Jason Wallace  
The City College of New York  
NAC Building Room 1/210B  
160 Convent Avenue  
New York, NY 10031

- 2.4.2 You are solely responsible for ensuring that your proposal arrives on time at the proper location.
- 2.4.3 We won't accept faxed or emailed proposals.

### **Section 3 - GENERAL PROPOSAL REQUIREMENTS**

- 3.1 Prepare and submit one original and six (6) complete copies of your proposal. Include the following materials, completed, and with all required signatures and attachments:
  - 3.1.1 Technical and Financial Proposal with the information listed in Section 4
  - 3.1.2 Form 1 – Proposer Questionnaire and Certification of Proposal
  - 3.1.3 Form 2 – Price and Portion Sheet
  - 3.1.4 Form 3 – Summary of Financial Proposal
  - 3.1.5 this RFP document
  - 3.1.6 any Addenda

Do not sign Form 4 at this time.
- 3.2 Clearly mark all information submitted in your proposal with the Section and subsection number to which it is responsive.
- 3.3 Make sure that the information in your proposal is consistent throughout.
- 3.4 If you think that any of the information in your proposal is a trade secret or is proprietary, or if you are required to keep certain information confidential because of a prior contract, you must submit this information in a separate sealed envelope marked "CONFIDENTIAL PORTIONS OF PROPOSAL." We won't consider a request that an entire proposal be kept confidential. Similarly, pricing information, discounts, makes, model and catalog numbers of goods offered, terms of delivery and terms of payment are not considered proprietary and you must not designate them as such. To the extent permitted by law, we will deny public access to information submitted as described in this paragraph. If you don't follow these instructions, we won't be responsible for the confidentiality of the information.
- 3.5 Indicate on Form 1, Item 22 any deviations from this RFP. Do not make changes to the RFP documents themselves. Unless you indicate otherwise on Form 1, Item 22, we will assume that you agree to the proposed terms and conditions set forth in this RFP. We reserve the right to accept or reject any changes you suggest.
- 3.6 Include all discounts, incentives or other financial considerations in your financial proposal, even if not specifically mentioned in this RFP.

- 3.7** The Corporation is exempt from the payment of any federal, state and local sales and use taxes. Do not include these taxes when proposing prices for goods or services to be purchased by the Corporation.
- 3.8** Sign your proposal. Your proposal must be completed in the legal name of your company and must be signed by an authorized person.
- 3.9** Your proposal should offer your best and final terms. We reserve the right to award a contract on the basis of your submitted proposal without further discussion. Do not include ideas or concepts in your proposal that you are not prepared to implement should you be awarded the Contract.
- 3.10** Seal your proposal. The sealed envelope must clearly state: (i) your company's name and address, (ii) the title of this RFP, and (iii) the date and time the proposal is due.
- 3.11** By signing and submitting your proposal, you affirm that you have read this RFP, including but not limited to the Contract (Form 4), accept its terms, and are able and willing to sign the Contract if your proposal is selected, subject only to any changes negotiated and agreed to by both of us. The issuance of a letter of intent to award or similar document does not require or commit us to enter into the Contract with you until all terms and conditions are negotiated and acceptable to us. In the event of any inconsistencies between your proposal and the RFP, the language of the RFP will control unless we have specifically agreed in writing to accept the terms from the proposal.

#### **Section 4 - CONTENTS OF TECHNICAL AND FINANCIAL PROPOSAL**

Your proposal must include a technical and financial proposal with the following information:

- 4.1 Company Profile.** Provide the following:
- 4.1.1 A brief history of your company's presence in the food service industry, especially as it relates to the higher education market, including revenue levels, number of current accounts, years in business, and number and make-up of staff.
- 4.1.2 Evidence that your company has a minimum of three years of successful business experience performing comparable services to those under this RFP. Provide a list of your company's current corporate and educational clients. For those clients in the New York City metropolitan area, include the following information:
- (A) Name and address of the company
  - (B) Name and title of client contact
  - (C) Telephone number of client contact
  - (D) Period of service



- (E) Revenue level for each account
- 4.1.3 Former clients: Provide a list of companies where your company's services have been terminated (either by your company or by the client) within the past three years. For those companies in the New York City metropolitan area, include the following information:
- (A) Name and address of the company
  - (B) Name and title of client contact
  - (C) Telephone number of client contact
  - (D) Date and reason for termination
- 4.1.4 Evidence of your company's financial viability. We would prefer to receive copies of your company's audited financial statements for the past two fiscal years. If audited statements are not available, provide copies of your company's two most recent tax returns or compiled financial statements by an independent certified public accountant.
- 4.1.5 A description of your company's internal administrative systems, including but not limited to, inventory control, reporting of sales, and internal audit.
- 4.1.6 A description of any citations or other legal or regulatory actions against your company by a local or state health department or other agency regarding food safety or related issues in the past three years.
- 4.1.7 List any regional and/or national campus dining awards achieved.
- 4.2 Staffing and Training Plan.** Provide a Staffing and Training Plan for Food Service Operations that includes the following:
- 4.2.1 An organizational chart or short profile of your company's management structure, from immediate site management through district, regional and corporate oversight;
  - 4.2.2 Pro forma staffing charts for all Food Service Operations and venues, including position titles and descriptions, times scheduled to work, wage rates and benefits. Provide a summary of full-time employees scheduled per week by location. All student worker opportunities should be identified as such. Include all management, supervisory and office support;
  - 4.2.3 Resumes for the proposed site manager and key management staff for this account. Include any assistant managers with responsibility for retail food services and catering operations. Resumes should include education, experience, specific professional accomplishments and any special qualifications;

- 4.2.4 Evidence that the proposed site manager has completed all training required by New York State and New York City laws to perform Food Service Operations;
  - 4.2.5 Description of your company's skills training for its employees, including training in both "front-of-house" and "back-of-house" customer service skills and culinary arts skills for kitchen staff such as sautéing, roasting, braising, pan frying, deep frying, baking, and knife skills; and
  - 4.2.6 A plan to hire, train and evaluate students as employees. Describe the training programs and management opportunities available to students interested in a food service career, if any.
- 4.3 Retail Food Service Plan.** Submit a conceptual plan for each retail operation that your company proposes to operate. Take into account our objectives in issuing this RFP and plans for existing and proposed services and venues. For each concept, include details regarding décor and style of service. Also address the following:
- 4.3.1 Describe how your company would balance proper nutrition, popularity and cost.
  - 4.3.2 Describe any accommodations or special venues that would cater to the needs of persons with chronic dietary issues (diabetes, low-cholesterol, low sodium, etc.), religious diet preferences (kosher, halal, etc.), vegetarian diets, and the tastes of international populations. Consideration should be given to ways to provide meals meeting dietary restrictions in a setting that maximizes inclusiveness as well as matching the quality of regular offerings.
  - 4.3.3 Provide sample menus for two weeks of regular meals at each proposed retail venue, plus at least two seasonal menus for each venue;
  - 4.3.4 Describe any proposed special programs, such as holiday-themed parties and exam week snacks;
  - 4.3.5 Provide information regarding any branded or franchise operations being proposed. State what, if any, contractual or franchise commitments would be required and the resulting financial impact, if any, such commitments would have on Food Service Operations;
  - 4.3.6 Describe any kiosks, satellite locations or other new venues or locations your company is proposing. Include sample menus.
  - 4.3.7 Complete Form 2 – price and portion lists for representative items to be sold in the retail locations. Pricing must reflect our objective that food and beverages be provided to the College community at levels which are competitive with prices in food service establishments in the

neighborhoods surrounding the College, and by higher education institutions similar to College in terms of faculty and student populations, urban settings and educational mission;

4.3.8 Describe your company's anticipated method for collection of funds from customers—cash, credit cards, debit cards, smart cards, etc.—immediately and after the first year of the Contract (if some methods would be added later). Include the benefits to customers as well as advantages to us, the College and/or your company. The collection and submission of sales tax and all fees associated with debit and credit card sales will be the sole responsibility of the Food Service Operations Contractor; and

4.3.9 Include your company's proposed hours of operation for each retail location. Current hours of service (see [Exhibit C](#)) may be used as a guide for the first year, although we are interested in providing better service to the campus and are receptive to other schedules that accomplish this goal.

**4.4 Catering Plan.** Provide a catering plan for functions such as meetings, conferences, student club events, receptions, banquets, and parties. The plan should reflect the diverse needs of College students, faculty and staff. Include the following in your plan:

4.4.1 Sample menus with pricing for the following scenarios:

- \* Light lunches and/or refreshments delivered to conference rooms throughout the College campus
- \* Faculty and distinguished guest luncheon for 60: provide detail for both a buffet and a served luncheon
- \* Cocktail party for 300: provide detail for a buffet and passed hors d'oeuvres
- \* Breakfast in the President's conference room for 10
- \* Informal student/faculty mixer for 200

4.4.2 Description of systems that assure that events will receive quality food and optimum service in a timely manner;

4.4.3 Commitment to providing healthy catering options for all events. These should include fresh fruits and vegetables, whole grain products and chilled tap water; and

4.4.4 The process used to receive, process, affirm and confirm catering orders.

**4.5 Equipment and Maintenance.**

4.5.1 Provide a list, with quantity, brand and model number, of all equipment your company proposes to bring onto the College campus. Include

complete manufacturer's description literature regarding any equipment proposed.

- 4.5.2 Describe your company's point of sale (POS) system.
- 4.5.3 Describe your company's program for preventative maintenance and regular replacement of worn, malfunctioning or damaged equipment.
- 4.5.4 See Exhibit F for a list of College-owned equipment that will be made available to the Contractor for Food Service Operations.

**4.6 Quality Assurance.** Include a plan to provide quality assurance with respect to all aspects of the Food Service Operations with descriptions of:

- 4.6.1 The process by which food quality would be addressed for all food and beverages served or provided by your company;
- 4.6.2 Your company's internal quality assurance program, including samples of any inspection/quality audit forms used as part of any district, regional, or corporate visitations;
- 4.6.3 Follow up procedures for customer complaints;
- 4.6.4 A plan for ongoing as well as periodic customer service monitoring;
- 4.6.5 Any forecasting, merchandising, production and quality control techniques such as taste testing, temperature testing, sample recipes, utilization of leftovers, and identification and deletion of unpopular items; and
- 4.6.6 The training and supervision process that will be implemented and sustained to assure that proper food handling, holding, transport, and service standards are in place and consistently utilized. Contractor will be required to provide National Restaurant Association ServSafe® Food Handler training or the equivalent for all front-of-house and back-of-house staff.

**4.7 Support Services.** Describe your company's resources, systems and plans in each of the following areas:

- 4.7.1 Marketing, merchandising and promotions
- 4.7.2 Sanitation
- 4.7.3 Nutrition
- 4.7.4 Customer satisfaction
- 4.7.5 Other resources, systems and plans you believe will be of value

**4.8 Sustainability.**

- 4.8.1 In June 2007 CUNY's Chancellor Goldstein accepted Mayor Bloomberg's challenge to New York City's colleges and universities to reduce their greenhouse gas emissions 30% by 2017. CUNY is committed to incorporating sustainability into the fabric of the University by integrating sustainability into the curriculum, supporting research, and investing resources to create more sustainable and green facilities. Achieving this goal requires the assistance and cooperation of our vendors, including those providing food-related services.
- 4.8.2 Examples of sustainable food practices include:
- procuring foodstuffs from local growers;
  - using organic products;
  - recycling;
  - using "green" cleaning products;
  - using washable rather than disposable dishware, cups, utensils and the like;
  - when disposable serving products are used, avoiding styrene or plastic products and instead using products that are recyclable and/or contain high levels of post-consumer recycled content; and
  - donating left-over food to local homeless shelters and soup kitchens.
- 4.8.3 Describe in detail how your company would address sustainability issues in food service at the College for maximum environmental, social, and economic impact. Provide specific goals, with percentages and dates. See Section 5.17 of Form 4. We and the College are particularly interested in phasing out the use of Styrofoam service items and increasing the use of items with high levels of post-consumer recycled content. Please also address how, if at all, the use of sustainable practices will affect the financial package your company is able to offer us.
- 4.8.4 Provide a detailed recycling plan.
- 4.9 Management/Usage Reports.** Provide samples of all reports and forms to be used in Food Service Operations and payment of commissions. See Section 7.3 of Form 4 for a list of information to be included in the commission report.
- 4.10 Financial Proposal.** Indicate on Form 3 your company's financial proposal with a detailed description of commissions and other consideration and support you are offering. Include the items listed below:
- 4.10.1 a commission percentage return on gross sales from retail food service and catering;
- 4.10.2 a guaranteed minimum annual payment to Corporation, regardless of gross sales. Contractor will be required to pay either the commission percentage (4.10.1) or the guaranteed minimum, whichever is greater.

- 4.10.3 an annual cash donation in support of the College's fundraising gala or events sponsored by the College's Office of Student Affairs as chosen at the Corporation's sole discretion;
- 4.10.4 annual in-kind donations of food, beverages, paper products and disposable utensils, with such donations valued at their wholesale cost;
- 4.10.5 annual in-kind donations of labor in the form of Contractor's cooking and service staff working select College events, with such donations valued at the actual labor cost; and
- 4.10.6 a Capital Improvement and Furnishing Fund as described in Section 4.11 below.
- 4.11 Capital Improvement and Furnishing Fund.** As part of your financial proposal, include a Capital Improvement and Furnishing Fund to be paid to Corporation for the purpose of making capital improvements to, and furnishing, the food service locations listed on Exhibit B and any new locations you are proposing. Include the dollar amount of the Fund, a detailed description of the work you propose for the food service locations (with an estimated budget), and the basis for the cost estimates. Corporation anticipates that it will directly purchase the goods and services for the work. See Section 5.15 of Form 4 for additional information.
- 4.12 Pro Forma Statement.** Submit an estimated operating statement for the fiscal year ending June 30, 2014, indicating the following sales and costs:
- \* Cash Sales
  - \* Contract Sales
  - \* Catering
  - \* Total Sales
  - \* Total Food Cost
  - \* Salaries and Wages
  - \* Other Payroll Costs
  - \* Total Labor Costs
  - \* Commissions
  - \* Franchise Fees
  - \* Cafeteria Supplies
  - \* General Insurance
  - \* Vehicle Costs
  - \* Office Supplies
  - \* Uniform and Laundry
  - \* Bank Charges
  - \* Replacement, China, Silverware, Glassware
  - \* Pots/Pans, Kitchenware
  - \* Administrative Expenses (with detail)
  - \* Other Operating Costs (specify major items)
  - \* Total Direct Expenses

## \* Total Cost and Expense Operating Profit

**4.13 Transition Plan.** The Contract is anticipated to go into effect on March 30<sup>th</sup>, 2015, which is approximately 16 weeks prior to the beginning of the fall semester. Please describe your company's transition plan. Include a schedule for the capital improvement and furnishing plan and the manner in which customers will be served beginning on the start date of the Contract. Indicate any resources you believe will be needed from the College to assist you with the transition.

**4.14 Additional Information.** Provide any other information you believe will be helpful to the Selection Committee in evaluating your proposal.

### Section 5 - MODIFYING YOUR PROPOSAL

You may submit a modified proposal to replace a submitted proposal up until the Proposal Due Date and Time. It is your responsibility to ensure that any modified proposal is clearly marked as such on the outer envelope. Submit your **entire** proposal again, as modified. We will open only the latest timely submitted proposal.

### Section 6 - WITHDRAWING YOUR PROPOSAL

**6.1** Your submission of a proposal is a binding offer to provide goods and/or financial remuneration and/or to perform services. This offer will remain in effect for 180 calendar days after the Proposal Due Date (the "offer period"), and will continue thereafter, unless you withdraw your proposal pursuant to Section 6.3 or 6.4 below. Any request to withdraw your proposal must be made in writing to the Authorized Contact.

**6.2** You may withdraw your proposal at any time before the Proposal Due Date.

**6.3** After the Proposal Due Date, you may withdraw your proposal after the offer period has ended and before any award of the Contract to your company.

**6.4** You may withdraw your proposal during the offer period only if your request to withdraw is based on a unilateral error or mistake in the proposal, the request is made before any award of the Contract to your company, and we approve the request. You must submit the request to withdraw within three calendar days after the Proposal Due Date, or prior to Contract award, whichever period is shorter. Within five calendar days thereafter, you must furnish documentary proof of the following:

6.4.1 the price(s) or financial remuneration proposed were based on an error of such magnitude that enforcement would be unconscionable;

- 6.4.2 the proposal was submitted in good faith and you submit credible evidence that the mistake was a clerical error as opposed to a judgment error;
- 6.4.3 the error in the proposal is due to an unintentional and substantial arithmetic error or an unintentional omission of a substantive quantity of work, labor, material, goods or services made directly in the compilation of the proposal, which error or omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the proposal; and
- 6.4.4 it is possible to place us in the same state as before the requested withdrawal.

**Section 7 - PROPOSAL EVALUATION**

**7.1** This is a request for proposals and not a bid process. Therefore, we have the discretion to evaluate the qualitative as well as financial aspects of each proposal and make a selection based on what we consider to be in the best interests of the Corporation and the College.

**7.2** We will appoint a Selection Committee consisting of a minimum of three persons. The Selection Committee may appoint one or more consultants to advise on specific issues arising during proposal evaluation. The Selection Committee will evaluate those proposals that meet the Requirements. Once the Selection Committee has completed its evaluation, it will make a recommendation to the Board of Directors of the Corporation. The Board will make the final determination regarding award of the Contract.

**7.3** The criteria on which each proposal meeting the Requirements will be evaluated, and the weights assigned to them, are as follows:

Qualifications and References [Sections 4.1 and Form 1]	25 %
Technical Proposal [Sections 4.2 through 4.8, 4.12]	35 %
Financial Proposal [Sections 4.9 through 4.11]	20 %
Site Visit	<u>20 %</u>
TOTAL	<u>100 %</u>

**7.4** We reserve the following rights:

- 7.4.1 to interview each or shortlist of proposers;
- 7.4.2 to negotiate with proposers as necessary in our best interests. We may negotiate with proposers concurrently or sequentially. If we invite you to negotiate with us, this does not give you any property rights regarding the RFP or the Contract;
- 7.4.3 to rescore proposals after interviews, site visits, and/or negotiations;



7.4.4 to award the Contract to other than the proposer or proposers offering the lowest overall cost or the greatest financial return to us; and

7.4.5 to decide tie proposals in our best interest.

## **Section 8 - RESERVATION OF RIGHTS**

Notwithstanding anything to the contrary in this RFP, we reserve the right to:

- 8.1** reject any and all proposals;
- 8.2** reject your proposal if:
  - 8.2.1 you do not meet all of the Requirements;
  - 8.2.2 you misstate, mislead or conceal any material fact in your proposal, or in subsequent submissions, whether oral or written;
  - 8.2.3 it is not in compliance with law;
  - 8.2.4 it contains variations from the terms and conditions of the RFP or the Contract, or is otherwise not responsive to their requirements;
  - 8.2.5 any part of it is conditional;
  - 8.2.6 it contains conflicting information; or
  - 8.2.7 we make a determination in accordance with law that your company is not responsible.
- 8.3** reject your proposal if you communicate with someone other than the Authorized Contact, unless that communication is specifically permitted by this RFP. If you are awarded the Contract and we discover a violation after award, we have the right to immediately terminate the Contract.
- 8.4** amend, withdraw or re-issue this RFP: (i) before the Campus Visit, with written notice to all entities who have requested and/or were sent an RFP or (ii) after the Campus Visit, with written notice only to those entities who have attended the Campus Visit;
- 8.5** waive or modify minor irregularities in your proposal;
- 8.6** visit one or more of your clients and/or former clients;
- 8.7** change any of the scheduled or projected dates of this RFP;

- 8.8 request additional information, representations, samples, and demonstrations from you;
- 8.9 use any, some, or all ideas submitted in your proposal unless such ideas are protected by proprietary rights and you declare this pursuant to Section 3.4 above; and
- 8.10 award the Contract, if at all, to one or more proposers.

## **Section 9 - GENERAL PROPOSAL CONDITIONS**

- 9.1 This RFP and the Contract are governed by the laws of the State of New York.
- 9.2 The Contract will be a requirements contract, and any prior year sales data provided to you is for information purposes only, and is not a guarantee. The sales actually earned by the company awarded the Contract may be less or more than in prior years. If less, we will not be liable to the company for damages or lost profits because of this.
- 9.3 You may not make public announcements or news releases regarding this RFP or any subsequent contract without our prior written approval.
- 9.4 You may not use the name or any trademark, service mark, or other proprietary mark or logo of Corporation, CUNY or any constituent college of CUNY without our or CUNY's prior written approval, as the case may be.
- 9.5 You are responsible for all costs associated with the preparation, transmittal, or presentation of your proposal.
- 9.6 At our request and your cost, you must timely remove any samples you provided to us. We won't be responsible for any samples that are destroyed or damaged while in our custody. If samples aren't removed within thirty calendar days after we send you a written notice, they will be considered abandoned. Expenses incurred in their disposal will be charged to you.
- 9.7 We will not be bound by any oral or written information released prior to the date of release of this RFP. After its release, we will be bound only by this RFP, any Addenda, and the Contract.
- 9.8 The information provided in this RFP is summary in nature and has been prepared without audit or verification. We make no representations or warranties of any kind, either expressed or implied, with respect to this information.

## **EXHIBIT A**

### **DESCRIPTION OF COLLEGE**

The flagship of The City University of New York, City College offers outstanding teaching, learning and research on a beautiful campus in the heart of the world's most dynamic city. Our classrooms are equipped with the technology for a truly interactive learning environment. Our libraries hold 1.5 million volumes and provide online access to the resources of the entire university. Our laboratories are engines of innovation, where students and faculty push the boundaries of knowledge.

Outstanding programs in architecture, engineering, education and the liberal arts and sciences prepare our students for the future, and produce outstanding leaders in every field. Whether they are drawn to the traditional, like philosophy or sociology, or emerging fields like sonic arts or biomedical engineering, our baccalaureate graduates go on to graduate programs at Stanford, Columbia or MIT – or they stay right here in one of our fifty masters programs or our doctoral programs in engineering, the laboratory sciences, and psychology.

Nowhere else in the city do undergraduates have so many opportunities to conduct research with professors and publish and present their findings. In our science, engineering and social science programs, more than 300 undergrads work alongside senior researchers in funded projects.

Leading CUNY in funded research, we house a number of research centers, and soon two new advanced research centers will rise on South Campus. Nearly all of our full-time faculty hold PHD's or – like our architecture faculty, maintain professional practices. Art professors exhibit their work, film professors make films, and music professors perform in venues around the country.

The campus is alive with student activity. City College fields 14 varsity teams that compete in NCAA Division III – and students work out in an equipment rich fitness center, relax in the Marshak swimming pool, and socialize in more than 100 student clubs. And our students come from around the corner and world, representing 160 nationalities, and speaking 90 languages.

City College is an integral part of the civic, urban and artistic energy of New York and inseparable from its history. We are the City that built this city.

### **Population**

There are currently 16,000 students enrolled at City College (13,000 undergraduate and 3,000 graduate students). In addition the College has a total of approximately 4,000 employees including approximately 520 full time faculty, 1300 part time faculty, 400 full time staff and 300 part time staff.

**EXHIBIT B**

**FOOD SERVICE LOCATIONS**

The Contractor will provide Food Service Operations at the following locations (“Food Service Locations”):

1. Main Campus, [The City College of New York, 160 Convent Ave NY, NY 10031]
  - a. Student Cafeteria & Academia Cafe, 2nd Floor
    - Kitchen/Food Prep,
    - Office Space
    - Storage Spaces
    - Closets
    - Retail Food Court
    - TOTAL APPROX 11,563 sq. ft.
  - b. Student Dining Hall  
TOTAL APPROX 10,934 sq. ft.
  - c. Faculty/Staff Dining Room, 3<sup>rd</sup>, Floor
    - Kitchen/Food Prep
    - Office/Storage Space
    - Private Conference Rooms
    - TOTAL APPROX 12,941 sq. ft.

Building	Floor	Room #	SqFt	Description
Nac	2	2/101	10,934	Food Facility
Nac	2	2/102	3,228	Food Facility Service
Nac	2	2/103	3,515	Food Facility Service
Nac	2	2/103A	102	Food Facility Service
Nac	2	2/104	110	Administrative Office
Nac	2	2/105	134	Administrative Office
Nac	2	2/105A	53	Administrative Office Service
Nac	2	2/106	1,372	Food Facility Service
Nac	2	2/107	1,287	Food Facility Service
Nac	2	2/107A	132	Food Facility Service
Nac	2	2/107B	214	Food Facility Service
Nac	2	2/107C	300	Food Facility Service
Nac	2	2/108	273	Food Facility Service
Nac	2	2/109	120	Food Facility Service
Nac	2	2/110	65	Food Facility Service
Nac	2	2/110A	52	Food Facility Service
Nac	2	2/110B	89	Food Facility Service
Nac	2	2/110V	30	Food Facility Service
Nac	2	2/111	120	Food Facility Service
Nac	2	2/111A	62	Food Facility Service
Nac	2	2/111B	39	Food Facility Service
Nac	2	2/VE1	266	Merchandising
Nac	3	3/101	8,022	Food Facility
Nac	3	3/102A	12	Food Facility Service
Nac	3	3/103	1,223	Food Facility Service
Nac	3	3/104	106	Food Facility Service
Nac	3	3/105	535	Food Facility
Nac	3	3/106	530	Food Facility
Nac	3	3/107	46	Food Facility Service
Nac	3	3/111	91	Food Facility Service

**EXHIBIT C**

**COLLEGE CALENDAR  
2014-2015 Academic Calendar**

**Spring 2015**

**BEGINNING of Spring Term - Classes begin**

January 28, 2015

**College Closed – Lincolns Birthday**

February 12, 2015

**No Classes Scheduled – Presidents Day**

February 16, 2015

**Spring Recess (College Open)**

April 3 – April 11, 2015

**College Closed – Memorial Day**

May 25<sup>th</sup>, 2015

**Commencement**

May 29<sup>th</sup>, 2015

**Summer Session 2015**

**BEGINNING of Begin Session – Classes begin**

June 1<sup>st</sup>, 2015

**EXHIBIT D**

**SCHEDULE OF RETAIL FOOD SERVICE OPERATIONS**

The hours listed are the current hours of operations for the food services on campus. Contractor may propose other hours that accomplish our goal of providing convenient service to the College campus and local community.

Note that the Bare Planet and Starbucks Café hours are given for information purposes only. These locations are NOT part of this RFP.

<b>Current Hours of Dining Services on Campus</b>				
<b>Facility</b>	<b>Monday - Thursday</b>	<b>Friday</b>	<b>Saturday</b>	<b>Sunday</b>
<b>Main Dining Hall (2<sup>nd</sup> Fl. NAC Building)</b>	7:00 a.m. – 8:30 p.m.	7:00 a.m. – 2:30 p.m.	Closed	Closed
<b>Bare Planet 1<sup>st</sup> Fl. NAC Building</b>	10:00 a.m. – 5:00 p.m.	10:00 a.m. – 2:30 p.m.	8:00 a.m. – 2:00 p.m.	Closed
<b>Academia Café 2<sup>nd</sup> Fl. NAC Building</b>	7:30 a.m. – 8:00 p.m.	7:30 a.m. – 2:00 p.m.	Closed	Closed
<b>Starbucks Café Marshak Building</b>	8:30 a.m. – 2:00 p. m.	8:30 a.m. – 2:0 p.m.	Closed	Closed

**EXHIBIT E****PAST SALES STATISTICS**

In general, food sales at the College are heaviest during Fall I (Sept – Dec) and Spring I (Mar - May) semesters, and decline significantly during Fall II (Jan – Feb) and Spring II (Jun - Aug) sessions. Daily sales Monday through Thursday during the Fall and Spring Semesters are level, but decline significantly on Fridays and Saturdays.

<b>Revenue Center</b>	<b>Sales</b>	<b>Transactions</b>
Cafeteria	1,318,888	542265
Bare Planet	162,938	95633
Academia	271,319	169,980
Starbucks Marshak	190,294	94,098
Catering	1,200,000	
<b>Total Sales</b>	<b>3,143,439</b>	<b>901976</b>

These numbers are given as a guide only, and are not a guarantee of future sales. Also, the Bare Planet and Starbucks Café numbers are given for information purposes only; these locations are NOT part of this RFP.



**EXHIBIT F**

**LIST OF COLLEGE-OWNED EQUIPMENT**

**“See PDF Attachment”**



**PROPOSER QUESTIONNAIRE**

IDENTIFICATION OF PROPOSER		
1. Full Name of Proposer (exactly as it appears in organizing document)	2. Identification Numbers a. FEIN # b. DUNS #	
3. D/B/As and other names used by Proposer	4. Website Address	
5. Address of primary place of business		
6. Principal NYS address (if other than #5)		
7. Primary Contact	Phone	Fax
Title	Email	
STRUCTURE OF PROPOSER		
8. Check appropriate organization structure <input type="checkbox"/> Corporation* <input type="checkbox"/> Limited Liability Company (LLC)* <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other (describe)	9. Date of Incorporation/Formation	
	10. State of Incorporation/Formation*	
* If Proposer is a corporation or LLC not incorporated/formed in NYS, provide a copy of authorization to do business in NYS.		
11. List all principal owners, officers, directors and key employees (attach additional pages if necessary):		
Name	Title	Mailing Address
12. Primary business activity		
13. Number of years experience in work of type covered by this RFP		
14. Do you pay prevailing wages?		<input type="checkbox"/> Yes <input type="checkbox"/> No

PROPOSER'S ACTIVITIES	
15. Has Proposer ever been refused the award of a contract on which it was the low bidder in competitive bidding?	<input type="checkbox"/> Yes <input type="checkbox"/> No
16. Has Proposer ever sued or been sued regarding payment or performance obligations in a contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
17. Has Proposer ever had a contract suspended or terminated for cause prior to the completion of its term?	<input type="checkbox"/> Yes <input type="checkbox"/> No
18. Are there any liens filed against Proposer?	<input type="checkbox"/> Yes <input type="checkbox"/> No
19. Are any actions or proceedings pending in New York State or in any other jurisdiction against Proposer, or any of its directors, officers, managers, partners, or other principals?	<input type="checkbox"/> Yes <input type="checkbox"/> No
20. Within the past 5 years, has Proposer, any officer, director, manager, partner, other principal, or owner of a more than ten percent (10%) interest in Proposer:	
a. been in arrears or default to Corporation, College, CUNY, any local, state or federal authority, or any entity affiliated with any of them, with respect to a debt, contract, or taxes	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. been declared not responsible or disqualified by Corporation, College, CUNY or with respect to any local, state, or federal government contract	<input type="checkbox"/> Yes <input type="checkbox"/> No
c. been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law, including but not limited to fraud, extortion, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct	<input type="checkbox"/> Yes <input type="checkbox"/> No
21. Within the past 5 years, has Proposer, any officer, director, manager, partner, other principal, or owner of a more than ten percent (10%) interest in Proposer been issued a citation, notice, or violation order, for violations of:	
a. federal, state or local health laws, rules or regulations, including but not limited to OSHA, New York State labor law, and the New York State Health Code	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. federal, state or local environmental laws	
c. unemployment insurance or workers' compensation coverage or claim requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No
d. Employee Retirement Income Security Act (ERISA)	<input type="checkbox"/> Yes <input type="checkbox"/> No
e. federal, state or local human rights laws	<input type="checkbox"/> Yes <input type="checkbox"/> No
f. civil rights laws	<input type="checkbox"/> Yes <input type="checkbox"/> No
g. federal Immigration and Naturalization Services (INS) and Alienage laws	<input type="checkbox"/> Yes <input type="checkbox"/> No
h. federal or state security laws	<input type="checkbox"/> Yes <input type="checkbox"/> No
i. charity or consumer laws	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>If you answered "Yes" to any of the above questions, list the question number below and provide a detailed explanation. Attach additional sheets if needed.</b>	
<b>Question Number</b>	<b>Explanation</b>

DEVIATIONS FROM RFP	
<p><b>22.</b> Does your Proposal contain any deviations from the terms and conditions set forth in the RFP, including the form Contract? If "Yes", list the Section and Subsection number below and describe the deviation or cross reference an explanation in your Proposal. Attach additional sheets if needed.</p>	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
Section & Subsection #	Deviation
PROPOSER'S REPRESENTATIONS AND WARRANTIES	
Proposer represents and warrants as follows (check the boxes):	
<input type="checkbox"/>	Proposer has carefully examined all parts of this RFP and any Addenda, and understands them.
<input type="checkbox"/>	Proposer will execute a contract in the form of the model Contract that is part of this RFP (subject to any amendments agreed in writing), if its Proposal is accepted by Corporation, and will faithfully perform all the terms and conditions of the Contract.
<input type="checkbox"/>	Proposer will fully comply with any and all laws, orders, or regulations of any federal, state or local authority or agency insofar as any of the same affect the execution and performance of the Contract and will notify Corporation promptly in writing of any such law that may be promulgated at any time during the course of performance of the Contract which may affect the Contract.
<input type="checkbox"/>	Proposer will comply with all applicable Equal Employment Opportunity and Affirmative Action programs and will ensure that all subcontracts entered into for the purposes of the Contract will contain provisions binding the subcontractor to compliance with these programs.
<input type="checkbox"/>	This Proposal has been developed independently, without the involvement of any other vendor responding to this RFP or any Corporation or CUNY officer or employee, and it is in all respects fair, and has been made without collusion or fraud.
<input type="checkbox"/>	No public, Corporation, or CUNY officer or employee, or person whose salary is payable in whole or in part, directly or indirectly, from the New York City or New York State Treasury, is directly or indirectly interested in this Proposal or the Contract, the services to which it relates, or in any portion of the profits of the Contract.
<input type="checkbox"/>	This Proposal and the representations contained in it, and the execution and submission of Proposal, have each been duly and validly authorized by all necessary action of Proposer's governing body.
INDIVIDUAL COMPLETING THIS QUESTIONNAIRE	
<b>Printed Name</b>	<b>Title</b>
<b>Signature</b>	<b>Date</b>

**CERTIFICATION OF PROPOSAL**

STATE OF

) SS:

COUNTY OF

**CERTIFICATION:**

I hereby certify, under penalty of perjury, that:

- \* I am knowledgeable about the submitting company's ("Proposer") business and operations;
- \* I have read and understand all of the information submitted in the Proposal, including the Proposer Questionnaire and any attached pages, and find it to be true, accurate and complete;
- \* I understand that the Corporation will rely on the information in the Proposal when determining whether or not to award the Contract to the Proposer;
- \* I understand that I have a duty to notify the Corporation of any material change to the responses given in the Proposer Questionnaire; and
- \* The submission of the Proposal and my execution of it have each been duly and validly authorized by all necessary action of the Proposer's governing body.

**PROPOSER:**

<b>Full Legal Name</b>
------------------------

**BY:**

<b>Printed Name</b>	<b>Title</b>
<b>Signature</b>	<b>Date</b>

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

**STAMP**

**PRICE AND PORTION LIST**

<b>Name of Proposer</b>
-------------------------

Below is a sample list of items expected to be offered ala cart. Please show portion size and retail price for each item. Where applicable, please provide container size and brand (use portion column).

<b>CAFETERIA FOOD SERVICE</b>		
<b>Item</b>	<b>Portion</b>	<b>Price</b>
Entrée only		
Entrée w/2 sides		
Side order (vegetable or starch)		
Pizza (cheese) slice		
Pizza slice w/topping		
Vegetarian sushi rolls		
Fish sushi rolls		
Burger (turkey, beef, veggie) with or without cheese		
Burger (turkey, beef, veggie) with or without cheese AND 1 side (fries, small salad, soup, chips)		
Cheeseburger		
Cheeseburger w/fries		
Chicken Breast Sandwich		
Grilled Cheese Sandwich		
French Fries		
Onion Rings		
Soup of the Day		
Roast Beef Sandwich with horseradish, cheddar cheese, lettuce and tomato		
Turkey Sandwich with goat cheese, arugula and chipotle mayonnaise		
Ham & Brie Sandwich with Dijon mustard, lettuce and tomato		

Item	Portion	Price
Tuna Salad Sandwich		
Egg Salad Sandwich		
Falafel Wrap		
Grilled Vegetable Wrap		
Salad Bar		
1 egg on roll w/meat and/or cheese		
2 eggs on roll w/meat and/or cheese		
Pancakes		
Bagel		
Bagel w/cream cheese or butter		
Donut		
Muffin		
Hot cereal		
Cold cereal w/milk		
Cookie		
Yoghurt		
Fruit (piece)		
Cake/Pie		
Coffee		
Coffee		
Tea		
Orange Juice, fresh squeezed		
Milk		
Fountain Soda & Fruit Drinks		
Bottled Soda		
Bottled Water		
Can Soda		



**SUMMARY OF FINANCIAL PROPOSAL**

Name of Proposer

**I. Annual Minimum and Commissions.** Contractor will be required to pay Corporation either the guaranteed minimum or the commission percentage, whichever is greater.

**A. Guaranteed Annual Minimum** \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

**B. Commission percentages**

*Retail Food Service*

% of Annual Gross Sales up to \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

% of Annual Gross Sales of \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00 to \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

% of Annual Gross Sale of \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00 to \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

*Catering*

% of Annual Gross Sales up to \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

% of Annual Gross Sales of \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00 to \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

% of Annual Gross Sale of \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00 to \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

**II. Annual Cash Donation** in support of the College's fundraising gala or events sponsored by the College's Office of Student Affairs as chosen at the Corporation's sole discretion. \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

**II. Amount of Capital Improvement and Furnishing Fund** \$ \_\_\_\_, \_\_\_\_, \_\_\_\_\_.00

**III. Other Support (product donations, discounts, etc.)**

**A. Annual value at Wholesale Cost of In-kind Donations of Food, Beverages, Paper Products and Disposable Utensils**

\$ \_\_\_\_, \_\_\_\_.00

**B. Annual value at Actual Labor Cost of In-kind Donations of Labor in the form of Contractor's cooking and service staff working select College events**

\$ \_\_\_\_, \_\_\_\_.00

**C. Other**

**IV. Estimated Annual Direct Dollar Value of Proposal**

\$ \_\_\_\_, \_\_\_\_, \_\_\_\_.00

**FOOD SERVICE OPERATIONS CONTRACT**

THIS CONTRACT is made \_\_\_\_\_, 200\_ by and between The City College Auxiliary Enterprise Corporation (the "Corporation"), a New York not-for-profit corporation located at 160 Convent Ave New York, New York 10031 and organized for the purpose of providing certain services to and for the benefit of the community of The City College of New York ("College") of The City University of New York ("CUNY"), and \_\_\_\_\_, a \_\_\_\_\_ corporation with a principal place of business at \_\_\_\_\_ (the "Contractor").

**WITNESSETH:**

WHEREAS, Corporation issued a Request for Proposals ("RFP") for management and operation of certain food services on the College campus and related activities, as further described in Section 5 of this Contract ("Food Service Operations");

WHEREAS, Contractor submitted a Proposal in response to the RFP and Corporation selected Contractor's Proposal; and

WHEREAS, the parties desire to enter into an agreement with respect to the performance of the Food Service Operations;

NOW THEREFORE, this Contract is entered into upon the following terms and conditions:

**Section 1 - DEFINITIONS**

When used in this Contract, the following words have the meanings set forth in this Section:

- 1.1 "City" means New York City.
- 1.2 "Catering" means providing food and/or beverages to members of the College community and their guests or others using College facilities, at or to locations on the College campus, other than through regular retail meal service at Food Service Locations. Catering is not limited to events in which Contractor's Staff serves the food and/or beverages.
- 1.3 "Days" means calendar days unless otherwise specified.
- 1.4 "Food Service Locations" means those Food Service Operations locations listed on Appendix A.
- 1.5 "Law" means any law, statute, rule, regulation, ordinance and other pronouncement (including common law).

- 1.6 **“Person”** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust or association.
- 1.7 **“Proposal”** means information, documents and samples provided by Contractor pursuant to the RFP.
- 1.8 **“Staff”** means a Person or Persons furnished by Contractor to perform the work of this Contract. Staff include Contractor’s employees, partners, agents and representatives, as well as Persons engaged by Contractor as consultants, coordinators, independent contractors, subcontractors, franchisees or in any other capacity.
- 1.9 **“State”** means New York State.

## Section 2 - GRANT OF LICENSE

- 2.1 **Rights.** Subject to the terms and conditions herein, Corporation hereby grants to Contractor, and Contractor accepts from Corporation, a license to manage and provide Food Service Operations at the College during the term of this Contract for the sole purpose of providing food and beverages to the College community and visitors to the College campus. The license is limited to the following:
- 2.1.1 the exclusive right and responsibility to provide retail food service in the retail Food Service Locations; and
- 2.1.2 the non-exclusive right to provide Catering.
- 2.2 **Exclusions and Exceptions.** Notwithstanding anything to the contrary in Section 2.1:
- 2.2.1 This Contract does not include vending machine operations.
- 2.2.2 Contractor’s rights under this Contract do not include the right to sell food and beverages in the College bookstore or, except for Catering, other locations not part of Food Service Locations. The Corporation and the College reserve the right to enter into agreements with other vendors regarding the sale of food and/or beverages in these other locations.
- 2.2.3 The College Student Government, the College Student Association, recognized College student organizations, and College classes studying food preparation, technique or related subjects have the right to conduct food demonstrations, sampling, bake sales and other temporary sales or distribution of food or beverages on the College campus.
- 2.2.4 The Corporation, the College and other organizations or groups affiliated with the College may occasionally use the Food Service Locations during the Contractor’s non-operational hours.

- 2.3 Pouring Rights Contract.** The City University of New York is a party to an agreement with Pepsi-Cola Bottling Company of New York, Inc. that governs the brands of non-alcoholic beverages sold at the College. The terms of this “pouring rights” contract take precedence over any conflicting terms in this Contract and, among other things, require Contractor to serve or offer for sale only beverages permitted by the pouring rights contract, and, with very limited exceptions (i.e., non Pepsi-Cola products permitted under the pouring rights contract), to purchase such beverages from Pepsi-Cola Bottling Company of New York, Inc. For the avoidance of doubt, when providing Food Service Operations, Contractor is not permitted to purchase Pepsi-Cola products from a beverage supplier other than Pepsi-Cola Bottling Company of New York, Inc. Contractor must abide by the terms of the pouring rights contract, or any successor to it, when providing Food Service Operations.

### Section 3- TERM

- 3.1** The term of this Contract is **[number]** years beginning on **[date]** and ending on **[date]**, unless terminated in accordance with the provisions of Section 14.
- 3.2** Corporation has **[number]** successive **[number]**-year renewal options. Corporation will exercise each option if it is in its best interest. If Corporation elects to renew this Contract, it will send written notice to Contractor not less than 90 Days prior to the expiration date of this Contract or such renewal year. Failure to notify Contractor within this time period will not constitute a waiver of Corporation’s option to renew. Each renewal will be on the same terms and conditions as stated in this Contract unless the parties enter into a written agreement specifically stating otherwise.
- 3.3** If Contractor provides performance security in the form of a performance bond (see Section 4.2.2), Contractor shall provide a new bond for each renewal term, if any, no later than 30 Days before commencement of the renewal term.
- 3.4** At Corporation’s written request, Contractor must continue to provide Food Service Operations for a period of no more than six months beyond the termination of this Contract or any renewal term thereof on the same terms and conditions as stated in this Contract.

### Section 4 – PERFORMANCE SECURITY

- 4.1** At the time of signing this Contract, Contractor must deposit with Corporation a certified check in the sum of **[\$ equal to 1/6 of guaranteed minimum proposed]**, to be held by Corporation, without liability for Corporation to pay interest on it, as security for the full, faithful and prompt performance of the terms and conditions of this Contract.

- 4.2** In lieu of delivering cash as a security, Contractor may deliver one of the following to Corporation:
- 4.2.1 an unconditional, irrevocable and transferable performance letter of credit issued for the account of Corporation by a New York Clearing House Association member bank acceptable to Corporation, in form and content satisfactory to Corporation. The term of the letter of credit, as it may be extended, must not expire prior to the date that is 60 Days after the expiration of this Contract or renewal of it.
  - 4.2.2 a Performance Bond in the form of Appendix G issued by a New York admitted carrier in the sum of **[\$ equal to ½ of the guaranteed minimum proposed]** which bond will guarantee faithful performance of the terms and conditions of this Contract, including any renewal of it.
- 4.3** In the event that Contractor defaults in respect to a material term or condition of this Contract, Corporation reserves the right to use, apply or retain the whole or any part of the security described in Sections 4.1 and 4.2 to the extent required for any sum to which Contractor is in default or for any sum which Corporation may expend or may be required to expend by reason of Contractor's default. In the event that Contractor fully and faithfully complies with the terms and conditions of this Contract, any security deposit will be returned to Contractor after the expiration or termination of this Contract.

## **Section 5- SCOPE OF SERVICES**

- 5.1 Schedule.** Contractor must provide Food Service Operations at no cost to Corporation or College on a year-round basis on such days and times as are set forth in Appendix B, or as otherwise required by Corporation. Contractor may not vary from the operational schedule set forth on Appendix B without the express written permission of Corporation. Corporation reserves the right to require Contractor to operate additional hours during exam periods, and on weekdays, weekends and holidays to accommodate special campus events.
- 5.2 Staff.** Contractor must maintain at all times an experienced and qualified Staff in numbers sufficient to ensure efficient, hygienic and orderly performance of the Food Service Operations. Contractor's Staff must maintain proper standards of courtesy, service and professionalism in dealings with the College community.
- 5.2.1 Contractor must promptly remove and replace any Staff member that Corporation, in its sole judgment, deems to be unsatisfactory, subject to compliance with applicable legal requirements and any collective bargaining agreements to which Contractor may be a party.
  - 5.2.2 Contractor must designate an experienced and capable individual to be on-site manager of Food Service Operations ("Manager").
    - (A) The Manager will be responsible at all times for implementation of

this Contract and must have the authority to resolve problems with regard to food quality, staff/customer relations, administrative issues and the like.

- (B) The Manager must have completed all appropriate and required training in food safety and sanitation per New York State and New York City requirements.
- (C) The Manager serves subject to approval by Corporation, and Corporation reserves the right to interview any person whom Contractor proposes as Manager. In the absence of the Manager, Contractor must designate an alternate Manager under the same terms and conditions. The intent of this provision is to give Corporation access at all times to an individual with full authority to make decisions on behalf of Contractor. Nothing in this section is intended to preclude Corporation from discussing matters relating to this Contract with any other of Contractor's Staff.
- (D) The Manager must be available to Corporation and College during all Food Service Operations hours. Contractor must provide Corporation with the Manager's office telephone, facsimile, beeper and cell-phone numbers and e-mail address. Contractor must keep this information current at all times. The Manager must be accessible by telephone to the College's food services liaison or designee within 30 minutes of attempted contact during Food Service Operations hours.
- (E) The Manager must be available, at Corporation's request, once per quarter for a meeting discussing food quality and nutrition with members of the Corporation and representatives of student groups on campus.

5.2.3 Corporation reserves the right to designate certain time periods as "peak hours." Contractor must provide additional serving Staff as may be required during such peak hours.

5.2.4 Contractor must assign at least one Staff member with a current Food Protection Certificate issued by the NYC Department of Health and Mental Hygiene to each work shift. Contractor must submit copies of these certifications to Corporation.

5.2.5 Contractor's Staff must observe College rules, regulations and policies, as well as all applicable provisions of this Contract. Failure to do so is grounds for Corporation to require temporary or permanent removal of a Staff member from the College campus. Nothing in this Contract will be deemed to relieve Contractor from liability for any deficiencies in performance by Contractor's Staff.

- 5.2.6 Contractor's Staff must wear neat, clean and attractive uniforms appropriate to their positions while on duty. Contractor is responsible for all costs attendant to providing, cleaning and replacing such uniforms. Contractor's Staff must wear visible nametags at all times during scheduled shifts.
- 5.2.7 Contractor shall implement quarterly of Staff, including training in customer service skills for both "front-of-house" and "back-of-house" service staff and training in culinary arts skills for kitchen staff, such as sautéing, roasting, braising, pan frying, deep frying, baking, and knife skills.
- 5.2.8 Contractor shall provide National Restaurant Association ServSafe® Food Handler training or the equivalent for all front-of-house and back-of-house Staff.
- 5.2.9 When Contractor has part-time positions appropriate for students available, it must notify the College placement office. Contractor agrees to cooperate with the College placement office in these placements.
- 5.2.10 Contractor must interview all members of the previous food service vendor's staff who are interested in working for Contractor.
- 5.2.11 Contractor must immediately notify the College and Corporation upon learning that a Staff member is carrying or has contracted an infectious disease.
- 5.3 Location.** Unless otherwise agreed by Corporation and College, retail food service must be carried out in the Food Service Locations only. Contractor may not close any portion of the Food Service Locations without the express written permission of Corporation.
- 5.4 Menu.**
- 5.4.1 Contractor must plan menu selections and portion sizes to enable customers to meet appropriate recommended dietary allowances set by the U.S. Department of Agriculture. In addition to popularity and cost factors, Contractor must plan menus to be appealing to the senses, and must take into consideration contrasts in color, shape, texture and flavor of food. Daily menus should reflect the needs, including tastes and dietary restrictions, of persons of various cultures, religions, medical conditions and personal beliefs, including those with kosher, halal, vegetarian, and vegan diets, and those with diabetes, and low-cholesterol and low-sodium needs. Contractor must provide meals meeting dietary restrictions in a setting that maximizes inclusiveness, and the quality of these meals must be equivalent to regular offerings.



- 5.4.2 Contractor must not use trans fat for baking, frying, pan-frying, grilling, or as a spread.
- 5.4.3 Contractor must limit the number of fried hot-food options available on the daily menu to no more than 5% of products offered at any given time.
- 5.4.4 Corporation reserves the right to further restrict menu options based on College or CUNY policy or Law, and to approve future menu plans.

**5.5 Quality.** Contractor must purchase, prepare, and supply fresh, high-quality food and beverages at no cost to Corporation. All food and beverages must be prepared in a sanitary manner, served at the appropriate temperature and consistency in an appetizing manner, in an adequate quantity, at reasonable prices and in compliance with applicable health codes and other Laws concerning food preparation and handling. All food must meet or exceed the following standards:

- 5.5.1 Whenever possible, Contractor must provide locally grown/produced meat, dairy, and produce and/or organic food in conjunction with a plan to remain ecologically sustainable.
- 5.5.2 All meat and meat products must be slaughtered, processed and manufactured in plants operated under a USDA Inspection program and bear the appropriate seal. All meat and meat products must be sound and sanitary on delivery.
  - (A) No preservatives, tenderizers or coloring agents may be added to any fresh meat or fresh meat product. Imported fresh or frozen meat products are prohibited for any purposes.
  - (B) The minimum grading requirements for all graded cuts are as follows:
    - Beef, lamb, and veal shall be USDA Grade Choice.
    - Pork shall be USDA #1.
    - Poultry shall be USDA Grade "A". This grade applies to all fresh or frozen poultry products. However, in the interest of food safety, only frozen poultry products shall be used at the College.
    - Provisions or variety meats shall be USDA Grade #1.
- 5.5.3 Fresh fish and seafood must be top grade; frozen fish and seafood must be a nationally distributed brand, packed under continuous inspection of the U.S. Department of the Interior.
- 5.5.4 Dairy products must meet minimum standards as follows:

- (A) Eggs - fresh USDA or state graded "A".
- (B) Butter - USDA Grade "AA" (93) score.
- (C) Cheese - USDA Grade "A" for all grated cheese.
- (D) Milk and Milk products - USDA Grade "A".

5.5.5 Fresh fruits and vegetables, if graded, must be USDA Fancy to USDA Number "1".

5.5.6 Dry stored items and canned goods must be USDA Grade "A".

5.5.7 Frozen fruits and vegetables must be USDA Grade "A".

5.5.8 Rigorous serving standards must be upheld, including:

- (A) Hot food and beverages must not be served below 145 degrees Fahrenheit.
- (B) Cold food and beverages must not be served above 40 degrees Fahrenheit.

## 5.6 Pricing.

5.6.1 Prices for Food Service Operations shall be competitive with comparable menu items served by local commercial food operators.

5.6.2 Prices and portion sizes for representative retail food service items are set forth in Appendix E. These prices and sizes shall serve as a guide for other items not listed and shall remain in effect for the first year of this Contract. Thereafter, the parties will review prices and portion sizes annually. Contractor may not change prices or portion sizes without the prior written consent of Corporation. Corporation will not be unreasonable in withholding approval of a change, subject to Contractor's presentation of documentation satisfactory to Corporation supporting the request, such as a competitive analysis of prices or portions in comparable operations in like institutions or reference to the Consumer Price Index, New York metro area, not seasonally adjusted, for food and beverages. If Corporation approves a price increase, Contractor must post notice of the price increase at least two weeks in advance of implementation. Any approved increase must be put into effect during the period between the College's last summer session and the beginning of the fall semester.

5.6.3 Contractor will present to the Corporation for the Corporation's approval prices and portion sizes for new retail food service items prior to the introduction of such new items.

5.6.4 Prices for Catering will be established by mutual agreement between Contractor and the party ordering the Catering, subject to the Catering Guide (see Section 5.12.1).

- 5.7 Contractor Property.** Contractor must provide and install, at no cost to Corporation, all trade fixtures, machinery, equipment, furniture or other personal property not provided by Corporation or the College, and necessary to perform Food Service Operations (the “Contractor Property”).
- 5.7.1 Any installation or relocation of Contractor Property (or Corporation Property, see below) must be approved by the College’s Director of Campus Facilities.
- 5.7.2 Contractor Property will not become the property of Corporation or the College and may be removed, at any time and from time to time during the term of this Contract and any renewals. An initial inventory of Contractor Property is attached as Appendix C. Contractor must update this inventory at least annually.
- 5.8 Corporation Property.** Attached as Appendix D is a list of all furniture, fixtures and equipment owned by the College and/or Corporation (the “Corporation Property”) located in the Food Service Locations and/or provided for Contractor’s use in Food Service Operations. The parties will review and update this list at least annually during the term of this Contract to assess the current condition of Corporation Property.
- 5.8.1 Corporation and the College make no implied or express warranties, including, but not limited to, warranties of merchantability or fitness for a particular purpose, with respect to the Corporation Property. However, Contractor shall have the benefit of any warranty or guarantee given Corporation or the College by the manufacturer or the seller of the property. Unless otherwise specifically agreed, all Corporation Property is supplied “as is.”
- 5.8.2 College and/or Corporation will retain title to the Corporation Property.
- 5.8.3 Contractor must not remove Corporation Property from the Food Service Locations. Upon termination or expiration of this Contract, Contractor must return Corporation Property in the same condition as received, reasonable wear and tear excepted.
- 5.9 Supplies.** Contractor must provide at no cost to Corporation all supplies necessary for Food Service Operations, including but not limited to display, specialty equipment and overhead lighting bulbs, paper goods (subject to sustainability requirements in Section 5.17), cleaning products and other expendables, in sufficient quantities and of appropriate quality to ensure proper food preparation and handling and efficient Food Service Operations.
- 5.10 Postings.** Contractor must conspicuously and clearly post daily menus and prices.

## 5.11 Housekeeping and Maintenance.

5.11.1 Contractor must keep the Food Service Locations as well as all furnishings, fixtures and equipment therein in a clean, neat, safe and sanitary condition, consistent with applicable Law. The requirements listed below are minima and are not intended to replace any stricter requirements mandated by government agencies with jurisdiction. Without limitation, Contractor must:

- (A) maintain a Letter Grade "A" from the City Department of Health for all Food Service Locations;
- (B) Daily clean and sanitize all surfaces and equipment used in preparing, serving and consuming food in Food Service Locations, including but not limited to floors, tables, chairs, and food preparation and bussing areas. Contractor must include at least once daily wet mopping and sanitizing of all floors in food preparation areas, and other floor areas as required;
- (C) spot-mop spills during hours of service;
- (D) clear trays, dishes, eating utensils and trash from retail food service locations and adjoining locations. The fact that some locations may be designated as self-bussing areas does not in any way limit Contractor's duty to maintain such locations in a clean, neat, safe and sanitary condition during hours of service;
- (E) remove in a timely manner all food service equipment and associated refuse from rooms and areas where Contractor has provided catering services;
- (F) clean loading dock area each business day, including a hosing with appropriate cleaning agents. Doors to loading dock area must be kept closed when the dock is not in use.
- (G) clean interior windows six times a year;
- (H) strip, buff and wax cafeteria, dining room, kitchen and prep area floors at the beginning of each of the Fall, Spring and Summer semesters, and must otherwise machine buff the floor as necessary to maintain a daily high gloss. For special events catered by the Contractor, Contractor shall prepare floors appropriately for each event;
- (I) provide for cleaning of grease traps monthly, or more often if the need arises (minimally when 25% of the liquid level of the trap is grease or oil), as follows: Work must be performed at Contractor's expense either (i) by the College's plumbing staff or (ii) by an

outside vendor approved by the College. Contractor must submit a monthly report of cleaning activity to the College Facilities Department. Contractor will be deemed liable for any damages resulting from the failure of Contractor to provide for cleaning of the grease traps in a timely manner or the improper cleaning of the traps by an outside vendor. Contractor shall be responsible for the proper disposal of grease and oil (unless done by College staff) in accordance with New York City Department of Environmental Protection requirements and any other applicable Law. Contractor must provide dates of scheduled cleanings to the College's Environmental Health and Safety Department at its request. Contractor must treat grease traps with a College-approved grease trap additive;

- (J) provide or subcontract for steam cleaning of all equipment used in carrying out Food Service Operations and the loading dock every six months, or when deemed necessary by the College, not to exceed six times per year; and
- (K) routinely inspect and relamp all retail Food Service Locations.

5.11.2 Contractor must:

- (A) comply with all applicable Laws regarding rubbish and recycling;
- (B) provide and maintain a sufficient number of appropriate receptacles, with liners (3 Mil or approved equal), for disposal of rubbish related to Food Service Operations, including receptacles for customer recycling of cafeteria rubbish. Receptacles should be placed in areas highly visible to customers;
- (C) provide or subcontract for carting and disposal services for rubbish and recycled materials. Such services shall be subject to approval by the College; and
- (D) remove rubbish from College campus no less than three times a week.

5.11.3 Contractor must, in consultation with the appropriate College facilities officer, maintain all components of the kitchen ventilation and duct system and other fire prevention equipment in the Food Service Locations in compliance with NYC Fire Department standards:

- (A) Maintenance shall include, but not be limited to, quarterly cleaning of the hoods, filters and ducts by an independent contractor approved by the College, and semi-annual inspection of the fire suppression system by a NYC Fire Department-certified inspection company.

- (B) Contractor must perform monthly “quick-check” inspections of portable fire extinguishers in the Food Service Locations and no less than annually have the extinguishers inspected and maintained and/or recharged as necessary by a NYC Fire Department-certified fire extinguisher servicing company approved by the College.
- (C) Contractor must provide Corporation with appropriate certification within five (5) Days of the cleaning and inspections required by this subsection.

5.11.4 Contractor must coordinate time and routing of deliveries with Corporation and College.

5.11.5 Contractor must use and maintain all cleaning agents in compliance with all applicable Laws.

5.11.6 Inspections.

- (A) In the event that governmental authorities (including but not limited to NYC Department of Health and Fire Department) arrive for an inspection of any Food Service Operation, the College must be notified and, whenever practical, will be present for the inspection. On the day Contractor receives a report of any such inspection, Contractor must promptly furnish to Corporation a legible copy of the report. Contractor shall correct all reported deficiencies and remove violations within 24 hours. Contractor is liable for the payment of any fine or penalty assessed by a governmental authority for any violation of health, sanitation or safety Law in the provision of Food Service Operations.
- (B) Corporation and the College reserve the right to periodically conduct, and/or contract third parties to periodically conduct on behalf of the Corporation or College, unannounced inspections of Food Service Operations with or without Contractor.
- (C) If Corporation or College requires a higher standard of sanitation or safety than is required by Law, then the higher standard will prevail.
- (D) Contractor must correct conditions unsatisfactory to Corporation or College within 24 hours of any request from Corporation or College. Any extension of time or other modification requested by Contractor will be granted only if made in writing within such 24 hours, citing the reasonable grounds for such request and the reasonable time of the extension requested or reasonable modification requested, with such documentary support as may be appropriate. Corporation’s decision will be final, conclusive and binding.

- 5.11.7 Contractor must maintain, repair and protect Corporation Property and Contractor Property, including but not limited to obtaining and paying for the cost of preventive maintenance and repairs, including repairs to tables, chairs, shades, trash receptacles, cooking equipment, cold boxes, ovens and refrigerators. Contractor must obtain prior written approval from Corporation before servicing or repairing Corporation Property.
- 5.11.8 Corporation will provide extermination services to the Food Service Locations.
- 5.11.9 Corporation reserves the right to charge Contractor for any cleaning or maintenance activities performed or contracted by Corporation or College in connection with Food Service Operations as a result of Contractor's failure to meet its obligations pursuant to this Section 5.11.

## **5.12 Catering.**

- 5.12.1 Contractor must develop and make available to College offices, departments and groups (including student organizations) by August 1 each year a Catering Guide with menus, prices, portions, and policies. Contractor is responsible for the cost, production and distribution of this Guide.
- 5.12.2 College departments, offices and organizations choosing to use Contractor for Catering College events will submit requests to Contractor on a form approved by Corporation. Contractor must work directly with College personnel concerning catering menus and prices.
- 5.12.3 In the event that an outside food services provider is selected to Cater any College event, the outside provider will not be permitted to use the server or kitchen areas of the Food Service Locations without Contractor's permission. Such outside food services provider may use the other areas of the Food Service Location such as the dining room and will be responsible for clean-up operations.
- 5.12.4 In connection with each event Catered by Contractor pursuant to this Contract at which alcoholic beverages will be served, Contractor must, at its own cost and expense, secure and maintain a caterer's permit issued by the New York State Liquor Authority to serve alcoholic beverages at such event.
- 5.12.5 Contractor must procure liquor liability coverage in Contractor's name and naming The City College Auxiliary Enterprise Corporation, The City College of New York, The City University of New York, The Dormitory Authority of the State of New York, and the State and City of New York as additional insureds. This coverage must protect the above-named entities and Contractor from claims for property damage and/or bodily injury that

may arise by reason of manufacturing, distributing, selling, serving or giving alcoholic beverages to the public. This insurance must be in an amount not less than \$1,000,000 per occurrence combined single limit. Contractor must provide Corporation with a copy of the insurance certificate before beginning alcoholic beverage service.

5.12.6 Alcoholic beverage service must be limited to areas approved by Corporation with service only to faculty, staff, students and guests of the College at least 21 years of age.

5.12.7 Contractor, and this Contract, are subject to any campus-wide alcoholic beverage policy.

**5.13 Improper Use.** Contractor may not use Food Service Locations in connection with operations unrelated to the College.

**5.14 Meetings.** Contractor and representatives of Corporation and/or College will meet from time to time to discuss administration of this Contract, evaluation of Food Service Operations and such other matters as may arise. See also Sections 5.2.2(E) and 6.8.

**5.15 Capital Improvement and Furnishing Fund.** Within 30 Days of its signing of this Contract, Contractor shall provide Corporation with the sum of [**\$ number**] to be used by Corporation for the purpose of making such capital improvements to, and purchasing such furnishings for, the Food Service Locations, as mutually agreed by the parties (the "Capital Improvement and Furnishing Fund").

**5.16 Sustainability.** Contractor acknowledges that in June 2007 CUNY's Chancellor accepted the New York City Mayor's challenge to the City's colleges and universities to reduce their greenhouse gas emissions 30% by 2017, and that CUNY is committed to incorporating sustainability into the fabric of the University. Contractor further acknowledges that on April 24, 2008, the New York State Governor issued Executive Order Four that requires CUNY to develop and implement a Sustainability and Environmental Stewardship Program that is designed to reduce the environmental impact of the activities and operations of the University. Contractor agrees to assist CUNY in achieving its sustainability goals by carrying out the activities described below, as well as through such other activities and programs that the Contractor may implement:

**[To be negotiated. However, Contractor should expect to abide by a plan for phasing out the use of Styrofoam service items, limiting the use of plastics, increasing the use of paper with high levels of post-consumer recycled content, and increasing the use of "green" cleaning products. See sample language below.]**

5.16.1 Contractor will purchase goods and services for Food Service Operations locally and use organic products, whenever possible. "Locally" is defined as within a [**number**] mile radius of Manhattan. Contractor will also use



local distributors whenever possible. Contractor commits that during the first year of this Contract at least **[percent]** of all food products used in connection with Food Service Operations will be locally grown or manufactured, and that this shall increase to at least **[percent]** during the next four years of the Contract.

- 5.16.2 Contractor will use only non-toxic, bio-degradable cleaning products such as Eco-Lab brand that meet Green Seal, Inc. or equivalent environmental standards.
- 5.16.3 Contractor will not use Styrofoam cups, plates or other products in Food Service Operations. Contractor will phase out use of non-recyclable, non bio-degradable plastics and other to-go disposables in Food Service Operations, with a goal of replacing them with compostable items during **[year]**.
- 5.16.4 Contractor will provide recycling bins throughout the College dining facilities and will recycle glass, plastic, paper and metal from Food Service Operations consistent with New York City laws and a Corporation and College-approved recycling plan (see also Section 5.11.2).
- 5.16.5 Contractor will phase out the use of non-sustainable napkins, take-out containers and other paper goods, including janitorial supplies, with a goal of replacing them with unbleached, 100% post-consumer recycled products by **[month] [year]**.
- 5.16.6 Contractor will recycle used cooking oil generated by Food Service Operations for conversion into bio-diesel.
- 5.16.7 In general, whenever possible, Contractor will monitor waste, monitor consumption, reduce multiple chemical uses, limit excess use of electricity, use biodegradable packaging, work with vendors to limit the amount of deliveries, and incorporate LEED practices.
- 5.16.8 All new equipment purchased by Contractor for use in Food Service Operations, will be energy efficiency rated.
- 5.16.9 Contractor will promote and sell travel coffee mugs with a logo approved by Corporation and College.
- 5.16.10 Contractor will work with College officials to identify a **[rooftop]** space for an “urban garden” to grow herbs and selected vegetables that can be incorporated into foods served on campus.
- 5.16.11 Contractor will enact a “tray less” food service program and promote minimal supply product usage in all dining operations.

- 5.16.12 Contractor will invest in chilled drinking fountains for all campus dining locations and provide paper cups made from recycled materials at no cost to customers.
- 5.16.13 Contractor will work with its waste management contractor to develop specific and measureable programs for composting, recycling and landfill reduction.
- 5.16.14 Contractor will develop a proactive website and communication system to significantly reduce printed paper in its campus communications and information systems.
- 5.16.15 Contractor will work with the relevant College constituencies regarding sustainability issues, including the College's Sustainability Council, the Department of Environmental Health and Safety, and Student Government.
- 5.16.16 Every six months, or as otherwise requested, Contractor will provide to the Sustainability Council an oral report supported by appropriate documentation describing Contractor's sustainability practices at the College and its progress toward meeting the goals set forth in this Section 5.17.

## Section 6 - COMMISSIONS, PAYMENT AND ACCOUNTING MATTERS

**6.1 Commissions and Guaranteed Minimum.** In consideration of the rights granted to Contractor by Corporation under this Contract, Contractor agrees to make the following payments to Corporation:

[%] of Gross Sales from retail food sales; and

[%] of Gross Sales from Catering sales.

or

a guaranteed minimum annual payment to Corporation, regardless of Gross Sales in the amount of [**\$ number**], whichever is greater.

**6.2 Other Support.** Contractor will also provide the following additional support to Corporation:

- 6.2.1 an annual cash donation in the amount of [\$] in support of the College's fundraising gala or events sponsored by the College's Office of Student Affairs as chosen at the Corporation's sole discretion;
- 6.2.2 annual in-kind donations of food, beverages, paper products and disposable utensils, with a wholesale value of [\$] per year ;
- 6.2.3 annual in-kind donations of labor in the form of Contractor's cooking and

service staff working select College events, with such donations valued at the actual labor cost of [\$] year; and

6.2.4 the Capital Improvement and Furnishing Fund described in Section 5.15.

### **6.3 Gross Sales.**

6.3.1 "Gross Sales" means aggregate revenues from Food Service Operations, excluding the following: (A) sales, use or excise taxes imposed and collected by Contractor directly from customers and paid over to any governmental agency; (B) sales, if any, to the College community by Contractor at cost, as may be made with the prior written approval of Corporation; and (C) refunds.

6.3.2 In the event that Contractor extends credit/charge sales to College departments, offices and organizations, such credit/charge sales must be included in Gross Sales figures at the time the sale was made, regardless of when Contractor receives payment.

**6.4 Monthly Payments and Reports.** Contractor must submit commissions and other payments due to Corporation on a monthly basis within 30 Days of the month's end. Payments must be made by [certified or bank check or money order payable][electronic funds transfer] to Corporation.

6.4.1 **Management Report.** Payments must be sent to the Corporation at address or EFT account information and accompanied by a Management Report signed by the controller or comparable officer of the Contractor and showing:

- (A) Gross Sales and permitted deductions by month, YTD and category (retail food service and catering);
- (B) commissions paid to Corporation by month and YTD; and
- (C) such other information as may be reasonably requested by Corporation.

6.4.2 **Monthly Profit and Loss Statement.** Contractor must also submit to Corporation a monthly profit and loss statement within 30 Days of the month's end.

**6.5 Year-End Reconciliation.** One year from the effective date of this Contract, and each full year thereafter during the life of this Contract, Contractor must pay Corporation that portion of commissions as may as yet be due so as to equal the commission percentages required by this Contract. Payment must be made by the 30th Day of the first month of the following Contract year and recorded as commissions paid in the year due. On expiration or termination of this Contract,

commissions due, if any, must be calculated and paid based on that portion of a full year for which Food Service Operations were provided.

- 6.6 Late Payments.** Delinquent payments are subject to a late payment fee of one-and-one-half percent (1-1/2%) per month, or portion thereof, of any balance due.
- 6.7 Records.** Contractor must maintain complete, accurate and separate books of account together with appropriate, detailed, supporting data and documents (including daily cash register tapes), in accordance with generally accepted accounting principles, for all transactions relating to the Food Service Operations (the "Records"). Such Records must be held in compliance with Section 6 of the Standard Contract Clauses attached to this Contract as Appendix F.
- 6.8 Inspection.** Corporation or its auditors may inspect and review Records, and may require Contractor to furnish such other financial information related to Food Service Operations, as Corporation deems appropriate. In the event of any question as to the dollar amounts due Corporation or Contractor, the decision of Corporation's auditors will be final and binding upon both parties to this Contract.
- 6.9 Meetings.** Corporation and Contractor will meet at least quarterly to review monthly reports, explain deficiencies, discuss problems and mutually agree on courses of action to improve the results of Food Service Operations. Any adjustments to a monthly report required as a result of review and/or audit will be identified and reflected on the next monthly statement.
- 6.10 Annual Audit.** Contractor must furnish to Corporation as soon as available, and in any event within 90 Days after the end of each fiscal year of Contractor, audited financial statements of Contractor as of the end of such fiscal year prepared by an independent certified public accountant. These financial statements must include a record of all sales and commissions from Food Service Operations.
- 6.11 No Liability for Credit.** Corporation assumes no liability for credit extended by Contractor to CUNY, College, faculty, staff, students, alumni, or any other person or entity. Contractor must bill credit/charge sales (the "Receivables") to CUNY, College departments, offices, organizations and individuals directly to those customers. Contractor is solely responsible for the collection of Receivables. Contractor may not offset Receivables against commissions or other amounts due to Corporation by Contractor, or condition payment of such commissions or other amounts to payment of Receivables.

## Section 7 - UTILITIES

- 7.1** Corporation will furnish at no cost to Contractor all necessary heat, water, gas, electricity and air conditioning (the "Utilities") for the efficient performance of Food Service Operations, except that:

- 7.1.1 Contractor will be responsible for any costs that result from changes in existing electrical service, plumbing service, ventilation, lighting, etc. required by Contractor to perform this Contract.
- 7.1.2 Corporation does not guarantee an uninterrupted supply of the Utilities, and will not be liable for any damages or compensation should the provision of Utilities be interrupted.
- 7.2 Contractor must use best efforts to comply with energy conservation measures by turning off or down (including low power mode) lights, fans, ovens, steam equipment, and other energy consuming items, when the Food Service Locations are not in use or when business volume dictates a reduction in the use of Utilities. Equipment use shall be planned and equipment not “warmed up” or charged if it is not expected to be used during that day or period.
- 7.3 Contractor must obtain, maintain and pay for off-campus telephone lines and facsimile services. Corporation will provide an on-campus telephone extension line for Contractor’s convenience.

## **Section 8 - SECURITY AND RISK OF LOSS**

- 8.1 Corporation will supply Contractor with two complete sets of keys to Food Service Locations. Contractor will be responsible for these keys and for the cost of replacement of lost keys. If Corporation or the College determines that keys lost by Contractor or its Staff could compromise campus security, Contractor will be responsible for all costs associated with re-keying the affected Food Service Locations.
- 8.2 Contractor must immediately report to Corporation and the College all fires, thefts, break-ins and other law enforcement and security matters, as well as accidents involving its Staff or customers.
- 8.3 Contractor bears the risk of loss or damage to Food Service Operations inventory, whether in transit, on display or in storage. Contractor also bears the risk of loss for monies collected pursuant to Food Service Operations. Losses or shortages of cash will not diminish monthly payment of commissions.
- 8.4 Contractor bears the risk of loss or damage to Contractor Property. Corporation is not responsible for any losses Contractor may incur due to damage to Contractor Property arising from any cause. Corporation assumes no responsibility for the protection of Contractor Property against loss arising from vandalism, theft, fire, water or other causes.
- 8.5 Contractor bears the risk of loss or damage to Corporation Property and Food Service Locations except if Corporation makes a determination that the loss or damage was due to causes beyond Contractor’s control or to robbery, fire, bombs, or similar causes or acts of third persons not employees or invitees of Contractor and provided that Contractor properly secured Food Service

Locations and provided also that the foregoing causes or acts were not directed at Contractor. Except in the case of such excused loss or damage, Contractor must reimburse Corporation at Corporation's cost for the repair or replacement of such Corporation Property and/or Food Service Locations. Corporation will give Contractor written notice of amounts to be reimbursed. Contractor must reimburse Corporation within 60 Days of the date of said written notice.

## Section 9 - INSURANCE

**9.1** Contractor must procure and maintain at its own cost throughout the term of this Contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with performance of the Food Service Operations by Contractor or its Staff. Contractor must provide minimum insurance coverage as follows (the "Required Insurance"):

Workers' Compensation and Employers Liability	As required by New York State Law.
Commercial General Liability (ISO Form CG0001, ed. 2001)	\$1,000,000 combined single limit for bodily injury and property damage, with an aggregate minimum for this Contract of \$3,000,000.
Business Automobile Liability Insurance (ISO Form CA0001, ed. 10/01)	\$1,000,000 combined single limit per accident for bodily injury and property damage, and covering all owned, non-owned or hired vehicles used by Contractor in connection with the Food Service Operations.
Umbrella Excess Liability	\$5,000,000 combined single limit over the primary employers' liability, commercial general liability and automobile liability coverage.
Liquor Liability	See Section 5.12.

**9.2** Each Required Insurance policy must specifically include liability assumed by Contractor under this Contract.

**9.3** Each Required Insurance policy must be underwritten by a licensed insurance company authorized to do business in the State of New York and with a minimum of an "A-7" rating in the current edition of A.M. Best's Insurance Guide.

**9.4** Each Required Insurance policy must be endorsed to state that coverage may not be suspended, voided, canceled, reduced in coverage or limits except after no less than 30 Days prior written notice has been given to Corporation, nor may any Required Insurance policy be suspended, voided, canceled, reduced in

coverage or limits by Contractor without the prior consent of Corporation. Notice pursuant to this section must be sent by certified mail or overnight courier and addressed to Corporation at the address listed at the beginning of this Contract, with a copy to CUNY Related Entities Group, Office of Counsel, 205 East 42<sup>nd</sup> Street, 11<sup>th</sup> Floor, New York, NY 10017. No cancellation provision in any Required Insurance policy may be construed in derogation of the continuous duty of Contractor to furnish insurance during the term of this Contract.

- 9.5** Each Required Insurance policy (except Workers' Compensation and Employers Liability) must be endorsed to include The City College Auxiliary Enterprise Corporation, The City College Of New York, The City University of New York, New York City, New York State, The City University Construction Fund, and The Dormitory Authority of the State of New York, and their respective trustees, directors, officers, employees and agents (the "Additional Insureds"). Such policies must stipulate that the insurance provided is primary insurance in respect of the Additional Insureds, and that any other insurance or self-insurance maintained by the Additional Insureds is excess and not contributory insurance. The Required Insurance must apply separately to each Additional Insured against whom a claim is made or suit is brought, subject to each policy's limit of liability. Additional Insureds must be covered as respects: (i) liability arising out of activities performed by or on behalf of Contractor, (ii) products and completed operations of Contractor, (iii) premises owned, leased or used by Contractor, and (iv) automobiles owned, leased, hired or borrowed by Contractor.
- 9.6** All deductibles or self-insured retentions must be declared to and approved by Corporation.
- 9.7** The Commercial General Liability policy must not contain any exclusions or endorsements that are not acceptable to Corporation.
- 9.8** Contractor must ensure that each Required Insurance policy (except Workers' Compensation and Employers Liability) includes a waiver of all rights of subrogation against the Additional Insureds for losses arising from Food Service Operations.
- 9.9** Contractor must furnish certificates to Corporation evidencing all Required Insurance and endorsements naming the Additional Insureds, before commencing Food Service Operations. Contractor must supply certified complete copies of Required Insurance policies to Corporation at Corporation's request.
- 9.10** Contractor is solely responsible for payment of all premiums for the Required Insurance, and is solely responsible for payment of any deductibles to which such policies are subject.
- 9.11** Contractor must promptly notify Corporation of any accidents arising in the course of performance of Food Service Operations causing bodily injury or property damage.

- 9.12** Notwithstanding the limits of Required Insurance, Contractor is liable for any and all personal injury (including death) or property damage caused by the negligence of Contractor, its directors, officers or Staff.
- 9.13** Contractor must ensure that its subcontractors and agents comply with this Section. Contractor must include all subcontractors and agents as insureds under the Required Insurance policies, or furnish separate certificates for such subcontractors and agents indicating compliance with the Required Insurance.
- 9.14** Failure on the part of Contractor to procure or maintain Required Insurance constitutes a material breach of this Contract. Upon such breach, Corporation may immediately terminate this Contract, or, in its sole discretion, procure or renew such insurance, and pay any and all premiums in connection therewith. Corporation may charge the costs thereof to money due or that may become due to Contractor, or if there is no money due, Contractor agrees to promptly pay Corporation such costs.

## **Section 10 - ASSUMPTION OF RISK AND INDEMNIFICATION; WAIVER**

- 10.1** Contractor is solely responsible for any and all injuries to persons (including death), damage to property, and loss, expense, inconvenience and delay, arising out of or in connection with the performance of Food Service Operations, or from any act, omission or neglect of Contractor, Contractor's directors, officers or Staff.
- 10.2** Contractor agrees to indemnify, defend and hold harmless Corporation, College, CUNY, City, State, The City University Construction Fund, The Dormitory Authority of the State of New York, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, from any and all actions, claims, demands, damages, fines, losses, liabilities, judgments, liens, and expenses of any kind (including, without limitation, court costs, attorneys' fees and related disbursements), arising out of or in connection with (i) the breach by Contractor of any of its agreements or covenants under this Contract, (ii) the untruth of any of Contractor's representations and warranties under this Contract, (iii) the actual or alleged infringement or violation of any patent, copyright, trademark, service mark, trade secret, or proprietary right, (iv) bodily injury sustained by any employee of Contractor or of Contractor's subcontractor, franchisee or agent arising out of and in the course of employment by Contractor or by Contractor's subcontractor, franchisee or agent, (v) the performance of Food Service Operations by Contractor and Contractor's Staff, or (vi) any claim by the Internal Revenue Service that monies, services or other support received by Corporation pursuant to this Contract constitute taxable unrelated business income.
- 10.3** Contractor hereby releases College, CUNY, City, State, The City University Construction Fund, The Dormitory Authority of the State of New York, and each director, trustee, officer, employee, agent, successor and assign of any or all of



them, from any and all liability hereunder.

**10.4** The provisions of this Section will survive the expiration of this Contract.

### **Section 11 - CONTRACTOR'S INDEPENDENT STATUS**

**11.1** The status of Contractor is that of an independent entity. Nothing contained in this Contract, nor any act of the parties, will be construed as creating a partnership, joint venture, agency or association of any kind, between Corporation, College or CUNY and Contractor, nor as making Corporation, College or CUNY in any way responsible for the debts or losses of Contractor.

**11.2** All personnel furnished by Contractor as required under this Contract are Staff of Contractor, and not of Corporation, College, CUNY, City or State, nor of any affiliated entity, agency, department, board, authority or instrumentality of any of them and Contractor alone is responsible for their work, their personal conduct while performing this Contract and their direction and compensation. Nothing included in this Contract imposes any liability or duty upon Corporation, College, CUNY, City or State to Contractor's Staff, nor makes Corporation, College, CUNY, City or State liable to any other Person or government for the acts, omissions, liabilities, debts, liens, obligations or taxes of whatever nature, including but not limited to unemployment insurance and Social Security taxes, of Contractor or Contractor's Staff.

**11.3** Contractor acknowledges that for the purposes of the Immigration Reform and Control Act of 1986 (the "Act"), Contractor is an "independent contractor" as defined in the Act and its regulations, and that Corporation is not an "employer" under the terms of the Act and its regulations with regard to Food Service Operations. As a result, the responsibility of complying with the provisions of the Act lie solely with Contractor.

11.3.1 Contractor expressly represents that it is aware of the requirements of the Act with regard to the employer's responsibility for ensuring compliance with the Act and its regulations, and for maintaining the proper forms showing that the verification process was completed.

11.3.2 Contractor expressly represents to Corporation Contractor's intention to abide by the provisions of the Act.

11.3.3 At Corporation or College's request, Contractor shall produce for inspection its records evidencing Contractor's compliance with the Act.

11.3.4 Contractor agrees that to the extent permitted by Law, Contractor will defend, indemnify and hold harmless Corporation, College, CUNY, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, for any penalty which may be applied to any one or all of them as the result of the hiring by Contractor of an unauthorized alien during the term of this Contract.

- 11.4** Contractor will permit no liens whatsoever to be placed against the property of Corporation or College and, should such liens attach, Contractor will take all steps necessary to accomplish the prompt removal of them.

## **Section 12 - USE OF NAME; ADVERTISING**

- 12.1** Contractor may not use the name, or any logo, mascot, seal, trademark, trade name or other proprietary mark of Corporation, CUNY or any constituent college of CUNY, for brand or product endorsement. Any other use is subject to Corporation's prior written approval.
- 12.2** Contractor may not post any signs or posters on, or visible from, the exterior or in common areas of College buildings or grounds, or distribute any fliers or brochures outside the Food Service Locations, without advance approval of the Corporation. The replacement, maintenance, safety, and removal of such materials are Contractor's responsibility.
- 12.3** In all purchase orders, and in commitments to vendors, suppliers, building contractors, in banking and in similar relations of Contractor in connection with the Food Service Operations, Contractor must use its full corporate name and address, in prominent association with any College address, in order to make it clear that any undertaking is Contractor's and not that of Corporation, College or CUNY.
- 12.4** Contractor must make prompt and timely payments to its franchisors, suppliers and subcontractors.
- 12.5** Contractor must obtain the prior written approval of Corporation before Contractor or any of its officers, Staff, or agents makes any statement to the press or issues any communication or publication bearing on the Food Service Operations.

## **Section 13 - CORPORATION'S ADDITIONAL RIGHTS**

- 13.1** Corporation and College have the right of access to Food Service Locations at all times.
- 13.2** Corporation and College have the right to establish rules, regulations and policies regarding the use of Food Service Locations.
- 13.3** Corporation, College and other organizations and groups affiliated with College have the right to use Food Service Locations from time to time during Contractor's non-operational hours for College purposes as may be required. To the extent possible, Corporation will provide to Contractor advance notice of such use. Such users will be responsible for appropriate setup and cleanup. Food Service Locations will be restored to conditions mutually satisfactory to Contractor and Corporation before the next regularly scheduled meal service.

## Section 14 - TERMINATION

**14.1 Termination for Cause.** This Contract may be terminated for cause by Corporation on immediate notice to Contractor as follows:

14.1.1 if Contractor fails to make any payment due under this Contract, and this default remains unremedied for a period of ten Days after notice or demand from Corporation to Contractor and its surety (if there is a performance bond);

14.1.2 if Contractor defaults in the performance or observation of any material term or condition of this Contract (other than a default as described in subsection 14.1.1), or persistently or repeatedly defaults in the performance or observance of any other term or condition of this Contract, and in each case such default remains unremedied for a period of 15 Days after notice from Corporation to Contractor and its surety (if there is a performance bond), or in the case of a default which cannot reasonably be remedied within such period, the Contractor fails to immediately and diligently carry out steps to remedy such default in accordance with instructions of Corporation; or

14.1.3 if Contractor becomes insolvent or otherwise discontinues business.

Termination for cause under this Section 14.1 constitutes grounds for a finding of non-responsibility for other CUNY-affiliated contracts. Corporation's failure to exercise any remedy accruing upon the default of Contractor will not be deemed a waiver of or acquiescence in any future default.

**14.2 Other Termination.**

14.2.1 Corporation may terminate this Contract in its best interests upon 90 Days' written notice to Contractor.

14.2.2 Contractor may terminate this Contract in its best interests upon 180 Days' written notice to Corporation.

14.2.3 Corporation may suspend or terminate this Contract upon immediate notice to Contractor should Food Service Locations be destroyed or damaged, either in whole or in part, or rendered unusable. Contractor will not be relieved of any obligations hereunder which have accrued on or prior to the effective date of the suspension or termination. Should this Contract be so suspended or terminated, Contractor hereby expressly waives any claim for damages or compensation, including but not limited to loss of use, lost profits or actual, special, incidental, indirect or consequential damages of any kind or nature.

**14.3 Refund in the Event of Early Termination.** The Capital Improvement and

Furnishing Fund described in Sections 5.15 and 6.2 shall be amortized over the [#-year] initial term of this Contract. If Corporation terminates this Contract without cause prior to the expiration of the initial term, Corporation will reimburse Contractor for the unamortized portion of the Fund. Contractor is not entitled to this reimbursement if Contractor terminates this Contract without cause or if Corporation terminates this Contract with cause.

#### **14.4 Inventory and Removal of Equipment.**

14.4.1 Upon expiration or termination of this Contract, Corporation will conduct a physical inventory of all Corporation Property. The inventory must be equal to the original inventory (see Appendix D), except for the deletion of items of Corporation Property that the Corporation agreed to retire and not replace, and the addition of any furniture, fixtures, equipment and other personal property, provided by the College or Corporation (including items provided through the Capital Improvement and Furnishing Fund).

14.4.2 Upon expiration or termination of this Contract, Contractor must remove Contractor Property from the College premises within ten Days of the date of expiration or notice of termination, as the case may be. Contractor must restore the Food Service Locations to the condition prior to use thereof by Contractor, normal wear and tear and any changes to the Food Service Locations made pursuant to Section 5.15 excluded. Contractor must repair all damage caused by the installation or removal of such Contractor Property. Such Contractor Property not removed from College campus will be deemed abandoned.

**14.5 Corporation's Rights.** On the effective date of any notice of termination received from Corporation, Contractor must stop performance of Food Service Operations. Upon termination, Corporation has the right to contract with another party for performance of Food Service Operations for the unexpired term of this Contract. In the event of a termination for cause, Corporation has the right to charge to Contractor any and all expenses incurred by reason of such termination, including but not limited to the cost of reletting this Contract and any difference in guaranteed annual commissions between this Contract and any substituted agreement. Nothing in this Section will be deemed to limit or waive any other rights or remedies of the Corporation under either Law or contract.

**14.6** The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights available to either party in Law or in equity.

### **Section 15 - COMPLIANCE WITH LAW**

**15.1** Contractor and Contractor's Staff must comply with all federal, state and local Laws governing Food Service Operations as well as all applicable Corporation, College and CUNY rules and regulations, and must timely secure, maintain and pay for all federal, state and local licenses, permits, certificates or other

authorizations required for the proper and lawful conduct of Food Service Operations.

- 15.2** Contractor is solely responsible for taxes, assessments and fees required or assessed in connection with Food Service Operations, including, but not limited to, sales, use, excise and payroll taxes, and federal, state and local income taxes and must make timely applications, reports and returns required in connection therewith.

## **Section 16 - PERIOD OF LIMITATION**

Contractor may not bring any action against Corporation based upon any claim arising out of this Contract unless it commences the action within six months from the date when the cause of action accrued.

## **Section 17 - CONTRACT DOCUMENTS**

Contractor's Proposal is attached to this Contract as Appendix H and made a part of the Contract. In the event of any inconsistency in, or conflict between, Contractor's Proposal and any other part of this Contract, such other part of the Contract shall control.

## **Section 18 - CUNY RELATED ENTITY REQUIREMENTS**

Contractor acknowledges that this Contract is a subcontract of services by Corporation to College and CUNY, and as such is subject to the Standard Contract Clauses set forth in Appendix F to this Contract. Termination by CUNY of its agreement with Corporation, in whole or in applicable part, for any reason whatsoever, will cause the simultaneous termination of this Contract without penalty of any kind.

## **Section 19 - MISCELLANEOUS**

- 19.1 Governing Law; Choice of Forum.** This Contract is governed by the laws of the State of New York, except where the Federal supremacy clause requires otherwise. All claims and actions brought under or arising from this Contract must be brought either in the courts of the United States or New York State located in New York City.
- 19.2 Assignment.** Neither this Contract nor any right, title or interest therein, may be assigned, transferred, conveyed, sublet or otherwise disposed of by Contractor without the previous consent, in writing, of Corporation. Any attempt to assign this Contract without Corporation's written consent will be null and void.
- 19.3 Severability.** The terms, clauses and provisions of this Contract are intended to be severable. Declaration of the unconstitutionality, illegality or unconscionability of any term, clause or provision will in no way defeat the effect or validity of any other term, clause or provision.

- 19.4 Headings and Language Interpretation.** The headings used herein have been inserted for reference only and are not substantive parts of this Contract. The use of the singular or plural form includes the other form.
- 19.5 Waiver.** Waiver by Corporation of a breach of any provision of, or right under, this Contract will not operate nor be construed as a waiver of any other or subsequent breach of the same provision or right nor of any other provision or right of this Contract. All remedies, either under this Contract or by Law or otherwise afforded, will be cumulative and not alternative.
- 19.6 Merger; Amendment.** This Contract supersedes any and all other agreements, written or oral, between the parties hereto, and constitutes the entire agreement between the parties with respect to the subject matter hereof. Accordingly, this Contract may not be altered, amended, modified, or otherwise changed, except by a document in writing signed by each party.
- 19.7 Notices.** All notices or other communications which are required or permitted pursuant to the terms of this Contract must be in writing and must be delivered personally, by overnight courier, or by fax machine or deposited in the United States mail, postage prepaid, registered or certified mail, to Contractor or Corporation, as the case may be, at their respective addresses as set forth at the beginning of this Contract, or at such other addresses as may have been specified by written notice delivered in accordance with this Section. Such notices and other communications will be deemed to have been given or made when so delivered or deposited. Nothing in this Section may be deemed to be a waiver of any requirements for service as provided by Law.
- 19.8 All Lawful Provisions Deemed Included.** It is the intent and understanding of the parties to this Contract that every provision of Law required to be inserted in this Contract be and is inserted in it. If through mistake or otherwise, any required provision is not included, or is not included in correct form, then this Contract will, upon the application of either party, promptly be amended so as to comply strictly with the Law and without prejudice to the rights of either party.
- 19.9 Set-off Rights.** Corporation has all of its common law, equitable and statutory rights of set-off. These rights include, but are not be limited to, Corporation's option to withhold for the purposes of set-off any moneys due to Contractor under this Contract up to any amounts due and owing to Corporation with regard to this Contract, any other contract with Corporation, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to Corporation from Contractor for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

IN WITNESS WHEREOF, the parties have signed this Contract:

**CONTRACTOR:**

**CORPORATION:**

---

---

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date:

## **APPENDIXES**

- APPENDIX A – Food Service Locations**
- APPENDIX B – Schedule of Operations**
- APPENDIX C – Contractor Property**
- APPENDIX D – Corporation Property**
- APPENDIX E – Prices and Portions**
- APPENDIX F – Standard Contract Clauses**
- APPENDIX G – Performance Bond**
- APPENDIX H – Contractor’s Proposal**



**APPENDIX F****STANDARD CONTRACT CLAUSES**

The parties to the attached Contract, license, lease, amendment or other agreement of any kind (hereinafter, "the Contract" or "this Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than Corporation, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **WORKERS' COMPENSATION BENEFITS.** This Contract shall be void and of no force and effect unless Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
2. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Article 9 of the Labor Law, then Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50.00 per person per day for any violation of the previous two sentences as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
3. **WAGE AND HOURS PROVISIONS.** If this is a contract for the construction, alteration, or repair of any public building or public work, or a building service contract as defined by Article 9 of the Labor Law, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days permitted by the Labor Law. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
4. **NON-COLLUSIVE BIDDING REQUIREMENT.** If this Contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to Corporation a non-collusive bidding certification on Contractor's behalf.
5. **INTERNATIONAL BOYCOTT PROHIBITION.** If this Contract exceeds \$5,000, Contractor agrees, as a material condition of the Contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USCA Section 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such Contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify Corporation within five (5) business days of such conviction, determination or disposition of appeal.
6. **RECORDS.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. Corporation or its authorized representative shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. Nothing contained herein shall diminish, or in any way adversely affect Corporation's right to discovery in any pending or future litigation.

7. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. If this Contract is: a) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby Corporation is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to Corporation or b) a written agreement in excess of \$100,000.00 whereby Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, then the following shall apply and by signing this Contract Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

i) Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment and promotion, upgradings, demotion, transfer, layoff or termination and rates of pay or other forms of compensation;

ii) at the request of Corporation, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein; and

iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the Corporation contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "i," "ii," and "iii" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of Contractor. This obligation does not apply to: a) work, goods or services unrelated to this Contract; or b) employment outside New York State. Corporation shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. Corporation shall determine whether the imposition of the requirements of the provisions hereof duplicates or conflicts with any such federal law and if such duplication or conflict exists, Corporation shall waive the applicability this section to the extent of such duplication or conflict.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix, the terms of this Appendix shall control.

9. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), Contractor hereby stipulates that Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

10. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

11. IRAN DIVESTMENT ACT. By entering into this Contract, Contractor certifies that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved. During the term of the Contract, should Corporation receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Corporation will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Corporation shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default. Corporation reserves the right to reject any bid, request for assignment, renewal or extension for an entity that

appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

January 2014

**APPENDIX G****PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, [**name of Contractor**] as Principal, and [**name of Surety**] as Surety, are held and firmly bound to The City College Auxiliary Enterprise Corporation (Corporation) or to its successors and assigns in the penal sum of [**amount of bond in words**] (**\$ number** ) Dollars, lawful money of the United States, for the payment of which sum of money well and truly to be made, the Principal and Surety do each bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with Corporation for Food Service Operations, which Contract is annexed to and hereby made a part of this bond as though herein set forth in full.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, its executors, administrators, successors or assigns, well and faithfully performs the Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, and fully indemnifies and saves harmless Corporation from all costs and damage which it may suffer by reason of failure so to do, and fully reimburses and repays Corporation for all outlay and expense which Corporation may incur in making good any such default, and protects Corporation against, and pays any and all amounts, damages, costs and judgments which may or will be recovered against said Corporation or its officers, agents or employees or which the said Corporation may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the performance of the Contract, or the manner of doing the same, or the neglect of the Principal, or its officers, agents or employees, or the improper performance of the Contract by the Principal, or its officers, agents or employees, then this obligation will be null and void, otherwise to remain in full force and effect and the Surety shall fulfill its obligations under the Bond upon notice pursuant to the following paragraph.

The Surety, for value received, hereby stipulates and agrees, if requested so to do by Corporation, to fully perform and complete the Contract, pursuant to the terms, conditions, and covenants thereof (including without limitation the payment of any sums due Corporation by Principal), if for any cause, the Principal fails or neglects to so fully perform and complete the Contract. The Surety further agrees to commence such performance within twenty (20) Days after written notice thereof from Corporation and to complete such performance within such time as Corporation may fix, provided however, that if Contract is a service contract then and until the Surety commences to perform or render the service, Corporation may immediately employ others to perform such service without impairing or affecting the obligation of the Surety and the Bond and the Surety must fully reimburse and repay Corporation for all outlay and expense incurred therefore. Any replacement Contractor engaged by Surety to complete the Contract is subject to approval of Corporation.

The Surety for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety and its Bond will be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any moneys due or to become due thereunder; and the Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees will have the same effect as to the Surety as though done or omitted to be done by or in relation to the Principal.

IN WITNESS WHEREOF, each of the Principal and the Surety have signed this Performance Bond, or caused it to be signed by its duly authorized officer this \_\_\_\_ day of \_\_\_\_\_, 200 \_.

PRINCIPAL (Seal)

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

SURETY (Seal)

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF \_\_\_\_\_ )  
) SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that s/he resides at

\_\_\_\_\_ ,

that s/he is the \_\_\_\_\_ of

\_\_\_\_\_ described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by authority of the board of directors.

\_\_\_\_\_

Notary Public

SEAL