

AGREEMENT

This agreement is entered into this 3rd day of June, 2019, by and between Chabot–Las Positas Community College District ("District") and Pacific Dining Food Service Management ("Pacific Dining") who are collectively referred to herein as "The Parties" doing business at 1700 W Hillsdale Blvd B10, San Mateo, CA 94402. This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

RECITALS

WHEREAS, the District requires a new contract for a food services provider to provide food/beverage services at the District's Las Positas College Campus ("LPC") 3000 Campus Hill Drive, Building 1600 Livermore, CA 94551; the RFP 18-19/01 is incorporated herein by this reference.

WHEREAS, Pacific Dining is engaged in the business of providing institutional food and beverage services; Pacific Dining is duly qualified, licensed, and otherwise authorized to engage in the business of providing food and beverage service,

WHEREAS, the District and Pacific Dining desire to establish terms and conditions for Pacific Dining to provide food/beverage services at LPC, as set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties and each of them, the Parties agree as follows.

1. **LPC FOOD/BEVERAGE SERVICE.**

Pacific Dining shall provide food and beverage services at LPC as set forth herein.

- a. LPC Cafeteria. During the days and hours set forth in this Agreement, Pacific Dining shall provide food/beverage service in the designated area known as the LPC Cafeteria.
- b. LPC Catered Events. In the event that a non-athletic competition event is conducted by LPC at the LPC campus which includes catered food/beverage service, Pacific Dining will be afforded an opportunity to submit a proposal to a LPC representative Contract Administrator to provide such catering services. If Pacific Dining is selected to provide catering services for a special event, the rights and obligations of Pacific Dining, LPC, and the District shall be as set forth in the Agreement for Catering Services relating to such event, including applicable commission recording and payment.
- c. Exclusions. The scope of items/services Pacific Dining is permitted to provide or offer under this Agreement excludes the following: (1) food/beverage sales at athletic events and theater/concert productions conducted at LPC, (b) limited vending machine operations at LPC, (c) similar functions conducted by or on behalf of LPC faculty, staff, students or student facility, including without limitation, the District's Chabot College.
- d. General. All operations conducted by Pacific Dining pursuant to this Agreement shall comply with the following general requirements.

- e. Compliance with Laws. Pacific Dining shall, at its cost and expense, obtain all necessary approvals, permits and licenses for its operations under this Agreement. All operations of Pacific Dining under this Agreement shall comply with applicable laws, ordinances, rules and regulations (collectively "the laws"), including without limitation, the Laws of the State of California, County of Alameda and the City of Livermore relating to the storage, handling, preparation and service of food/beverages.
- f. Compliance with District/LPC Policies. All operations of Pacific Dining under this Agreement shall comply with applicable District/LPC Policies in effect at the time this Agreement is executed, modifications to existing policies occurring after the date of execution of this Agreement and policies enacted during the Term of this Agreement. Without limiting the generality of the foregoing, Pacific Dining shall not under this Agreement, at any time, offer, with or without payment, any alcoholic beverages.
- g. Limitations on Use of District/LPC Property. Except as expressly provided in this Agreement, Pacific Dining shall not be permitted to use, occupy, possess or access property (whether real or personal) owned by the District or LPC.
- h. Pacific Dining's Labor/Materials/Services. Except as otherwise expressly provided in this Agreement, Pacific Dining shall, at its sole cost and expense, obtain all necessary labor, materials, equipment, furnishings, fixtures and other items necessary to timely and completely perform its obligations under this Agreement. Pacific Dining and Pacific Dining personnel shall be responsible for procurement of food, including without limitation, condiments, dressings and other foodstuffs necessary to perform and provide the food/beverage operations/services contemplated under this Agreement.
- i. Pacific Dining Personnel. Pacific Dining shall employ all necessary supervisory, operational and other personnel to perform its obligations under this Agreement and to ensure delivery of quality food/beverage services at LPC. Pacific Dining shall be responsible for all acts, omissions and other conduct of its personnel engaged in providing services under this Agreement. If requested by the District and for reasonable good cause in accordance with District/LPC policies, Pacific Dining will dismiss employees from providing services under this Agreement. Unless the District's request is not supported by reasonable good cause, there shall be no liability of the District to Pacific Dining for requesting the dismissal of any Pacific Dining employee. Pacific Dining shall comply with all laws, rules and regulations applicable to the hiring, retention, promotion, and termination of employees. Without limiting the generality of the foregoing, Pacific Dining shall comply with the District's policy that there be no discriminatory practices in the employment, retention, promotion or termination of employees of contractors/vendors to the District. No employee, officer, agent or representative of Pacific Dining in connection with this Agreement shall be deemed an employee of the District or LPC. Pacific Dining is solely responsible for recruiting, retaining and promoting employees in connection with its operations under this Agreement.
- j. Pacific Dining Personnel Uniforms. While providing food/beverage services under this Agreement, Pacific Dining employees will wear appropriate uniform clothing which may identify Pacific Dining. Prior to commencement of food/beverage service operations under this Agreement, Pacific Dining shall provide the Contract Administrator with sample(s) of the proposed uniform for review and approval. The

Contract Administrator approved uniform(s) shall not be modified without the prior consent of the Contract Administrator.

- k. Maintenance of Books and Records. Pacific Dining shall maintain books and records of expenses and revenue in connection with its operations under this Agreement. Books and records shall be contemporaneously maintained in accordance with generally accepted accounting principles applied in a consistent manner. Books and records, along with underlying source data, shall be available to the District for review, inspection, or reproduction upon reasonable advance request at Pacific Dining's principal place of business or at LPC.

2. **LPC CAFETERIA**

- a. LPC Cafeteria. The District grants Pacific Dining a non-exclusive license to use the LPC Cafeteria situated in Building 1600 at LPC for the sole purpose of providing LPC Cafeteria food/beverage service and related purposes. The LPC Cafeteria is more particularly identified in the cross-hatched portion of the LPC Campus Map attached to this Agreement as Exhibit "A" which is incorporated herein by this reference. For purposes of this Agreement, Pacific Dining and the District agree that the LPC Cafeteria consists of four (4) physical and discrete components generally described as: (a) the Food Storage Component; (b) the Food Preparation Component; (c) the Food Service Component and (d) the Dining Room Component. The locations of each Component of the LPC Cafeteria are more particularly identified in the LPC Cafeteria Layout attached to this Agreement as Exhibit "B" which is incorporated herein by this reference. During the days and hours of Pacific Dining's operation of the LPC Cafeteria, Pacific Dining will have a non-exclusive license to use the Dining Room Component; notwithstanding Pacific Dining's license to use the Dining Room Component, during Pacific Dining's use of the Dining Room Component, patrons of the LPC Cafeteria and others will be permitted to concurrently use the Dining Room Component and the District owned furniture and furnishings now or hereafter situated in the Dining Room Component.
- b. Kitchen/Food Preparation/Food Service Utensils. Pacific Dining shall be responsible for procuring all necessary kitchen/food preparation/food service utensils for conducting food/beverage service operations in the LPC Cafeteria. Pacific Dining shall, as necessary or appropriate, from time-to-time replace/repair existing utensils and to procure additional utensils as necessary for its kitchen, food preparation, and food/beverage service operations under the Agreement.
- c. LPC Cafeteria Utility Services. Without cost to Pacific Dining, the District will provide the following utilities to the LPC Cafeteria for use by Pacific Dining in performing Pacific Dining's obligations under this Agreement: (a) natural gas, (b) potable domestic water, (c) electrical power, (d) two lines of local telephone service for voice and fax; (e) connection to the LPC local area network; and (f) installation of meters measuring consumption of water, electrical power, and natural gas utilities. If the District determines that there is abuse, waste, or unreasonably excessive use of any District provided utility service, Pacific Dining shall be solely responsible for payment of costs of such abused, wasted, or excessively used utility service, as set forth below. For purposes of establishing baseline quantities of "normal" usage of natural gas, water, and electrical power, the District will maintain monthly record of Pacific Dining's usage of these utilities over the first year of the Initial Term. The baseline quantities for "normal" Pacific Dining usage of these utilities shall be the monthly average over the first year of the Initial Term. If in any subsequent time during the Initial Term or the Extended

Term(s), Pacific Dining's usage of a utility exceeds the baseline quantity of such utility by ten percent (10%), Pacific Dining and the District Representative will promptly review Pacific Dining's usage and determine whether the utility usage exceeds the utility usage baseline by ten percent (10%) or more. If it is determined by the District that the utility usage exceeding the baseline quantity is not the result of increased usage related to Pacific Dining's operations under this Agreement, Pacific Dining shall pay all costs of utility service in excess of one hundred ten percent (110%) of the baseline quantity of such utility. To the extent that any utility service is provided by the District, there shall be no liability of the District to Pacific Dining, nor shall there be other remedies of Pacific Dining against LPC or the District if a utility service is interrupted, eliminated, or reduced by the utility service provider and such interruption, elimination, or reduction is not the result of the District's non-payment of utility service charges. Notwithstanding the telephone and fax lines pursuant to the foregoing, Pacific Dining is solely responsible for obtaining and installing a telephone and fax machine.

- d. Limitations on Pacific Dining Use of the LPC Cafeteria. Pacific Dining's use of the LPC Cafeteria shall be exclusively in connection with Pacific Dining's provision of food/beverage services under this Agreement. Pacific Dining shall not use, nor permit use, of the LPC Cafeteria for any purpose not permitted by this Agreement, in violation of the Laws or for the storage, distribution, or dissemination of any hazardous or toxic materials or substances.
- e. LPC Cafeteria Menu. Pacific Dining shall prepare a menu and pricing of food/beverage items available for sale at the LPC Cafeteria which includes a sufficient variety of properly prepared food items with quality ingredients. Menu items shall routinely include ethnic foods consistent with the ethnicity of the LPC student body, vegetarian items, salads, and foods. In addition to routine menu items, in conjunction with special LPC events or holidays, appropriate menu items relating to the special LPC event or holiday will be made available by Pacific Dining. Prior to commencement of LPC Cafeteria operations, Pacific Dining shall submit to the Contract Administrator its proposed menu and pricing schedule for review and approval. Prior to changes to the menu approved by the Contract Administrator and prior to offering food in conjunction with special LPC events or holidays, Pacific Dining shall submit the proposed menu items to the Contract Administrator for review and approval. Pacific Dining shall modify menu items or pricing as may be reasonably requested by the Contract Administrator. In addition to offering prepared food items in the LPC Cafeteria, Pacific Dining may offer for sale in the LPC Cafeteria packaged food/snack items such as chewing gum, potato chips, candy, and similar pre-package food/snack items. Pacific Dining shall modify menu items or pricing as may be reasonably requested by the Contract Administrator.
- f. Pricing Increases and Menu Changes. Pacific Dining and District/LPC shall meet at least annually during the beginning of the Spring Semester to review and discuss menu offerings and menu prices. At this time, food services provider may request price changes and menu offering additions and/or subtractions in writing. The price changes and menu offering additions and/or subtractions shall be mutually agreed upon by Pacific Dining and District/LPC. District/LPC shall respond in writing to the food services provider within forty-five (45) days after receipt of request for price changes. Pricing changes and menu offering additions and/or subtractions shall go into effect during the following Fall Semester.
- g. Hours and Days of LPC Cafeteria Operation. Pacific Dining shall maintain an appropriately sized and skilled workforce, including supervisory personnel to operate the LPC Cafeteria as a food/beverage service facility during the times/days set forth herein below.

- i. Regular LPC Sessions. During LPC academic sessions, Pacific Dining shall provide food service at the LPC Cafeteria from no later than 7:00 A.M. to no earlier than 7:30 P.M. Mondays through Thursdays from 7:00 A.M. to 2:00 P.M. Fridays and closed Saturdays /Sundays and District's holidays.
- ii. Summer Sessions; Inner Session; Holidays. Hours and days of LPC Cafeteria operation by Pacific Dining during Summer Sessions, Inner Sessions, or holiday days will be determined based on mutual agreement of Pacific Dining and the Contract Administrator.
111. Amended Days/Hours of Operation. The foregoing hours/days of LPC Cafeteria operation by Pacific Dining notwithstanding, if the books and records maintained by Pacific Dining evidence that operation at the LPC Cafeteria pursuant to the foregoing hours/days of operation generates negative revenue, upon request of Pacific Dining, the Contract Administrator may consider amending the hour/days of Pacific Dining 's LPC Cafeteria operations. The decision of the Contract Administrator regarding amended hours/days of Pacific Dining's LPC Cafeteria operation is final and binding on Pacific Dining, unless the decision is the result of fraud or bad faith of the Contract Administrator.
- h. Maintenance and Cleaning of Components of the LPC Cafeteria. Maintenance and cleaning of the LPC Cafeteria Components shall be completed by Pacific Dining and District personnel pursuant to the following:
 - i. LPC Cafeteria Operations. During the hours/days of Pacific Dining operation at the LPC Cafeteria, Pacific Dining and its personnel shall provide daily custodial services necessary to maintain a clean and orderly facility for the cafeteria, kitchen, and food storage areas and generally maintaining a neat and orderly appearance in the Dining Component. These custodial services shall include:
 - Empty all refuse/waste from the kitchen and serving areas.
 - Clean all equipment and flooring in the kitchen and serving areas.
 - Maintain the floors in the kitchen and serving areas.
 - Light cleaning and busing of all tables/tabletops in the seating area.
 - Remove all refuse/waste from the seating areas throughout the day and at the very end of business day.
 - Maintain/sweep the floors and address any spills in the seating areas throughout the day and at the very end of business day.
 - Frequent and/or as needed, clean-up of tabletops, tile floors, carpeted areas, countertops, and other areas that are subject to food spills.
 - Maintain cleanliness of all food service and preparation surfaces and equipment.
 - Maintain cleanliness of all kitchen hoods up to the ceiling including filters and the physical hood, floor sinks and drains.

All custodial related services performed by Pacific Dining must meet the District's custodial cleaning standards. At the conclusion of its daily operations at the LPC Cafeteria, Pacific Dining shall leave the Dining Room Component in a reasonably neat and orderly condition so that the LPC maintenance/operations staff can readily access the Dining Room Component and the areas of the Dining Room Component to be cleaned.
 - ii. Preventative Maintenance of Pacific Dining and/or District's/LPC's Equipment/Fixtures. Pacific Dining shall perform regularly scheduled preventive

maintenance on all kitchen equipment/fixtures according to Manufacturer's recommendations and suggestions.

- m. District Cleaning and Maintenance of LPC Cafeteria. The maintenance/operations staff at LPC will provide the following services:
- The primary use of 9 cubic yards for the purpose of refuse disposal. Refuse Disposal will be divide amongst 3 sections – waste, compostable, and recyclables.
 - Recycling containers for paper products, plastic and aluminum cans.
 - Provide daily custodial services to the dining room area. These services will include the sweeping of floors and the vacuuming of carpeted areas. The District will also be responsible for the periodic waxing and buffing of dining room area floor.
- i. Maintenance, Repairs, and Modifications to LPC Cafeteria and Building Systems. The District will maintain the LPC Cafeteria structural elements and building systems serving the LPC Cafeteria, including electrical and heating, ventilating, and air conditioning systems, except to the extent that maintenance repairs or replacement of the structural elements are caused by Pacific Dining or its personnel outside of normal food service operations use, wear and tear, in which event, Pacific Dining shall be solely responsible for the costs of maintenance, repairs, or replacement. During the Term or Extended Term, the District reserves the right to add, delete, improve, or otherwise modify the LPC Cafeteria or building systems serving the LPC Cafeteria without liability to Pacific Dining provided that the additions, deletions, improvements, or other modifications are not completed in a manner which unreasonably disrupts Pacific Dining's food/beverage operation under this Agreement.
- j. Damage or Destruction of the LPC Cafeteria. If the LPC Cafeteria is damaged or destroyed, rights and obligations of the District and Pacific Dining shall be governed by the following provisions.
1. Partial Damage or Destruction. If the LPC Cafeteria is partially destroyed or damaged and the nature of the damage/destruction to the LPC Cafeteria does not unreasonably impair Pacific Dining's food/beverage service operations, during repairs, restoration, or replacement of the damaged/destroyed portions to the LPC Cafeteria, Pacific Dining shall continue to provide such services with modifications of the terms of this Agreement. If the nature of the partial damage/destruction of the LPC Cafeteria is such that Pacific Dining's food/beverage service operations in the LPC Cafeteria are materially affected, pending the completion of repairs, restoration, or replacement of the damaged/destroyed portions of the LPC Cafeteria, Pacific Dining may cease its food/beverage service operations therein. In such event, the Annual Payments due from Pacific Dining for the then current year of the Term during which the damage/destruction occurred will be reduced by the proportion of the time that Pacific Dining is unable to conduct food/beverage service operations in that year of the time that Pacific Dining is unable to conduct food/beverage service operations in that year of the Term.
 - II. Total Damage/Destruction. If the LPC Cafeteria is totally damaged/destroyed and the nature of the damage/destruction requires more than six (6) months to repair, restore, or e-build, Pacific Dining may terminate this agreement by written notice to the District. Pending the completion of repairs, restoration, or replacement of the damage/destruction to the LPC Cafeteria, Pacific Dining may cease its food/beverage service operations therein. In such event, the Annual Payments due from Pacific Dining for the current year of the Term during which the damage/destruction occurred will be reduced by the

proportion of the time that Pacific Dining is unable to conduct food/beverage service operations in that year of the Term.

- iii. Application of Insurance Proceeds. If any damage/destruction to the LPC Cafeteria is covered by a policy of insurance required of the District or Pacific Dining under this Agreement, all insurance proceeds shall be used and applied exclusively to completion of repairs, restoration, or replacement of the damaged/destroyed portions of the LPC Cafeteria.

3. **DISTRICT RESPONSIBILITIES.**

In addition to District responsibilities set forth elsewhere in this Agreement, the District, during normal and regular food service hours of operation, will be responsible for the following:

- a. Utility Service Connections. The District will provide points of connection for distribution of electrical power, domestic water, and natural gas utility services throughout the LPC Cafeteria as necessary for Pacific Dining's operations under this Agreement. The foregoing notwithstanding, except to the extent included in the scope of the Design Documents and the scope of the Construction Contract awarded for construction of the LPC Cafeteria Improvements, the District is not responsible for securing or paying for the costs of labor, services, equipment, and/or materials necessary to distribute utilities in the LPC Cafeteria.
- b. Security. Pacific Dining is solely responsible for security of the Food Storage, Food Preparation, and Food Service Components of the LPC Cafeteria. During the hours/days of Pacific Dining's food service operations in the LPC Cafeteria, Pacific Dining personnel shall generally monitor safety and security of persons and property in, on, or about the LPC Cafeteria. In the event of emergency circumstances, Pacific Dining shall promptly notify LPC Campus Safety.
- c. Pacific Dining Personnel Parking. The District grants Pacific Dining a non-exclusive license to park motor vehicles of its personnel in the LPC Parking Lot(s) as designated from time-to-time by the Contract Administrator. The license to park is subject to all existing and hereafter enacted Parking Rules and Regulations of the District or LPC, including the use of decals or other identification devices. Violations of District/LPC Parking rules/regulations will subject the owner of the motor vehicle to penalties including parking fines or towing of vehicles. The number of parking spaces and Parking Lot locations for Pacific Dining personnel motor vehicles may be modified from time-to-time by the Contract Administrator based on other

parking requirements and needs at LPC. Neither Pacific Dining nor its personnel will be charged a fee for parking while engaged in providing services under this Agreement. Parking for Pacific Dining personnel at LPC at other times will be subject to the standard LPC parking charges.

- d. Delivery/Loading Area. The District/LPC will provide a designated area at LPC for the delivery of items for Pacific Dining's operations under this Agreement. The foregoing notwithstanding, deliveries shall be limited to routes established by the District/LPC for deliveries at LPC and no deliveries shall be made nor accepted during regular LPC Sessions between the hours of 11:00 A.M. and 1:00 P.M. The District reserves the right to modify the days/times of permitted deliveries, the designated delivery routes(s), and/or the location of deliveries. Pacific Dining and/or the delivery service shall be solely responsible for any damage to District property resulting from deliveries or unloading of items delivered for Pacific Dining.
- e. Solid Waste Disposal; Recycling. Solid waste generated from Pacific Dining's operations under this Agreement will be removed by the District's solid waste disposal contractor without cost to Pacific Dining, except as expressly otherwise provided herein. The District will provide a maximum of 9 cubic yards of refuse disposal capacity for Pacific Dining's use only in connection with Pacific Dining's operations under this Agreement; the costs of additional trash bins to be used for disposal of any materials or substances which are hazardous or toxic, or which by law, rule, or regulation are not permitted to be disposed in a class III landfill. The District will provide trash bins to be placed at various locations in the LPC Cafeteria. During the days/hours of Pacific Dining food/beverage service in the LPC Cafeteria, Pacific Dining personnel are responsible for emptying trash bins as necessary to maintain a sanitary, neat, clean, and orderly condition in the LPC Cafeteria. The District and LPC require re-cycling bins in and about the LPC Cafeteria and will provide the same to be removed on a regular basis. Costs of the recycling bins and the removal of materials for recycling will be borne by the District; revenue generated by recycled materials is the sole property of the District. Notwithstanding the District's providing of recycle bins and removal of the same, during the days/hours of Pacific Dining food/beverage service in the LPC Cafeteria, Pacific Dining personnel shall monitor the recycling bins to maintain the same in a neat, orderly, and sanitary manner. If necessary, during Pacific Dining operations in the LPC Cafeteria, Pacific Dining personnel will empty recycling bins.
- f. Maintenance of District Owned Furniture and Furnishings. District owned furniture and furnishings in the LPC Cafeteria will be maintained by the District without cost to Pacific Dining. The foregoing notwithstanding, the cost of repair, restoration, or replacement of damage or destruction of District owned furniture or furnishings caused by Pacific Dining, its employees, agents, or representatives shall be borne by Pacific Dining.
- g. Pest Control. The District, with its own forces or through a vendor, will provide regular and routine pest control in and about the LPC Cafeteria, without cost to Pacific Dining. The foregoing notwithstanding, if Pacific Dining fails to exercise reasonable care in its use to the LPC Cafeteria and such failure result in pest infestation(s), Pacific Dining shall be solely responsible for obtaining all necessary pest control services at its cost and expense.
- h. Contract Administrator. The District will designate an employee of the District as the Contract Administrator with authority to act on behalf of the District and LPC under this Agreement. The Contract Administrator is the Vice President of Administrative Services by written notice to Pacific Dining, the District may change the Contract Administrator.

4. **INSURANCE; INDEMITY**

- a. Pacific Dining Insurance. At all times during the Term of this Agreement, Pacific Dining shall obtain and maintain the insurance coverage noted herein; each required policy of insurance shall be in the minimum coverage amount noted herein.
 1. Workers Compensation Insurance: Employer's Liability Insurance. Pacific Dining shall obtain Workers Compensation Insurance covering all employees of Pacific Dining engaged in operations under this Agreement. The Workers Compensation Insurance shall cover claims under worker's compensation, disability benefits, and other similar employee benefit laws applicable to Pacific Dining's operations under this Agreement. The Employer's Liability Insurance shall cover bodily injury or death by accident or disease to any employee which arises out of the employee's employment by Pacific Dining. The Employer's Liability Insurance may be obtained as a separated policy of insurance or as additional coverage under the Worker Compensation Insurance policy. The minimum coverage amount under the Workers Compensation Insurance shall be in accordance with applicable law. The minimum coverage amount under the Employers Liability Insurance shall be One Million Dollars (\$1,000,000.00)
 11. Commercial General Liability Insurance. The Commercial General Liability Insurance obtained by Pacific Dining shall cover the types of claims set forth below which may arise out of or result from the operations of Pacific Dining under this Agreement. The Commercial General Liability Insurance shall cover: (a) claims for damages for bodily injury, sickness, disease or death of persons other than Pacific Dining's employees; (b) claims for damages due to injury or death of persons or damage to property, including the loss of use thereof; (c) claims for damages arising out of bodily injury or death of persons or damage to property arising out of ownership, maintenance, or use of motor vehicles; (d) contractual liability applicable to the obligations under this Agreement; and (e) completed operations. The Commercial General Liability Insurance policy shall name the District and LPC as additional named insured there under.
 111. Property Casualty Insurance. The Property Casualty Insurance obtained by Pacific Dining shall cover the perils and risks of loss, damage or destruction of all trade fixtures and equipment, including without limitation, the Pacific Dining Equipment/Fixtures merchandise and other personal property situated from time-to-time in, on, or about the LPC Cafeteria. The coverage amount under the Property Casualty Insurance shall be one hundred percent (100%) of the actual replacement costs. The Property Casualty Insurance shall include coverage against the perils of "fire and extended coverage," vandalism, malicious mischief, theft, sprinkler leakage, earthquake sprinkler leakage, and flood damage. Proceeds of the Property Casualty Insurance shall be used by Pacific Dining exclusively for the purposes of rebuilding, restoring, replacing, or repairing damage to property caused by peril(s) included within coverage under the Property Casualty Insurance policy.
 - 1v. Additional Insurance Coverage. If Pacific Dining is awarded a contract to provide food/beverage service at a catered event sponsored by LPC, if required by the Contract Administrator, Pacific Dining shall provide additional or different insurance coverage in connection with service for such an event.

- v. Certificates of Insurance; Policy Requirements. Prior to the commencement of the Term of this Agreement, Pacific Dining shall deliver to the Contract Administrator Certificates of Insurance evidencing the insurance coverage required to be obtained and maintained by Pacific Dining. Each policy of insurance obtained by Pacific Dining hereunder shall provide, by endorsement, or otherwise, that the policy of insurance will not be permitted to lapse or expire, or to be materially modified without at least thirty (30) days advance written notice to the District.
 - vi. Deductibles; Premiums. Pacific Dining is solely responsible for the full and timely payment of premiums for policies of insurance Pacific Dining is required to obtain and maintain under this Agreement. In the event of a loss under a policy of insurance obtained and maintained by Pacific Dining hereunder, Pacific Dining shall be solely responsible for payment of the deductible, if any, associated with such loss.
 - vii. District Rights. If Pacific Dining fails or refuses to obtain and maintain any policy of insurance required hereunder, the District may, but is not obligated to, obtain such policy of insurance on behalf of Pacific Dining. If the District obtains a policy of insurance on behalf of Pacific Dining pursuant to the foregoing, Pacific Dining shall be responsible for payment of all premiums associated with such policy of insurance and an administrative fee equal to twenty-five percent (25%) of the premium costs.
- b. District Insurance. During the Term of this Agreement, the District will maintain insurance against the perils, losses, and claims described herein, provided that the District may, in its discretion, elect to self-insure, obtain a commercially available insurance policy(ies), or obtain insurance coverage through one or more Joint Powers Authorities.
- i. General Liability Insurance. The District will obtain General Liability Insurance covering the risks of death or injuries to persons and damage to property.
 - ii. Property Casualty Insurance. The District will obtain Property Casualty Insurance which will include coverage for the risks of loss, damage, or destruction to the LPC Cafeteria. The foregoing notwithstanding, the District's Property Casualty Insurance will not provide coverage for the risk of loss, damage, or destruction of items of personal property situated in, on, or about the LPC Cafeteria owned by Pacific Dining, including without limitation, the Pacific Dining Equipment/Fixtures.
- c. Waiver of Subrogation. The District and Pacific Dining each waive all rights of recovery against the other or against the Trustees, directors, partners, officers, employees, agents, or representatives, as applicable, of the District and Pacific Dining, arising out of a loss or damage which is insured under a policy of property casualty insurance in effect at the time of such loss or damage. The foregoing waiver shall be required of the insurers of the District and Pacific Dining to the extent that there are no additional premium costs for such waiver of subrogation.
- d. Pacific Dining Indemnification. To the fullest extent permitted by law, Pacific Dining shall indemnify, defend, and hold harmless the District, LPC and, as applicable, their employees, officers, Board of Trustees, individual members of the Board of Trustees, agents and representatives ("the Indemnified Parties") from any and all claims, demands losses, responsibilities, or liabilities for: (i) injury or death of Pacific Dining's employees arising out of this Agreement; (ii) injury or death of persons or damage to property, or (iii) other costs or charges, directly or indirectly arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of Pacific Dining and its employees, agents, and representatives. The foregoing shall include without limitation, attorney's fees and costs incurred by the Indemnified Parties and shall survive the termination of this Agreement until any

such claim, demand, loss, responsibility, or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

5. PACIFIC DINING PAYMENTS

a. Initial Term.

- l. Monthly Payments. Commencing on the fifteenth (15th) day of the first full calendar month after Pacific Dining's commencement of food/beverage service operations in the LPC Cafeteria and on the fifteenth (15th) day of each succeeding month during the Initial Term, Pacific Dining shall make Monthly Payments to the Las Positas College in accordance with the following schedule: Seven Percent (7%) of Monthly Revenue. Monthly Revenue shall be defined as gross cafeteria and catering sales less sales tax.
- ii. Annual Payments. In addition to the Monthly Payments due pursuant to the foregoing, during the Initial Term of this Agreement, Pacific Dining shall make Fixed Annual Commission Payments to the District in accordance with the following schedule:

Year of Term	Payment Due	Due Date of Payment
One	Twelve Thousand Dollars (\$12,000.00)	Thirty days after first day of their Contract
Two	Twelve Thousand Dollars (\$12,000.00)	First anniversary after Initial Annual Payment
Three	Twelve Thousand Dollars (\$12,000.00)	Second anniversary after Initial Annual Payment
Four	Twelve Thousand Dollars (\$12,000.00)	Third anniversary after Initial Annual Payment
Five	Twelve Thousand Dollars (\$12,000.00)	Fourth anniversary after Initial Annual Payment

b.

- c. Pacific Dining Contribution to LPC. In the first twelve (12) months of the Initial Term and during any twelve (12) month period thereafter, including Extended Term(s), Pacific Dining will make a contribution of four thousand and five hundred dollars (\$4,500.00) to Los Positas College for programs that enhance Student Success. Except for acknowledgment of Pacific Dining's contribution to LPC, the College shall have the sole discretion as to criteria for award of all or a portion of Pacific Dining's contribution and the student(s), if any to whom all or any part of Pacific Dining's contribution is awarded.

- d. Pacific Dining Transmittal of Payments. All payments due from Pacific Dining shall be paid by check made payable to "Las Positas College" and delivered to:

Las Positas College
 Attn: Administrative Services
 3000 Campus Hill Drive
 Livermore, CA 94551

6. TERM

- a. Initial Term. The Initial Term of this Agreement shall commence on the first day of June 2019. The Initial Term shall terminate five (5) years thereafter, unless terminated earlier pursuant to the terms of this Agreement.
- b. Additional Terms. At least one hundred and eighty (180) days before the end of the Initial Term or any Additional Terms, the District/LPC and Pacific Dining may extend this Agreement for one (1) additional one (1) year terms by mutual agreement. Renewal of the Agreement shall be authorized in writing by Authorized Representative of both Parties, and shall include all terms and conditions of the Agreement unless expressly modified during negotiations and included in the renewal contract.
- c. District Termination of Agreement for Pacific Dining Default. The District may terminate this Agreement by written notice to Pacific Dining, if Pacific Dining commits an event of default which shall include without limitation: (a) Pacific Dining's breach of any material obligation hereunder; (b) makes an assignment for the benefit of creditors; (c) Pacific Dining files or has filed against Pacific Dining, a proceeding for protection under state insolvency laws or the United States Bankruptcy Code; or (d) Pacific Dining conducts operations under this Agreement in violation of the Laws. Upon the District's issuance of the written notice pursuant to the foregoing, Pacific Dining shall have seven (7) days to undertake and complete a cure of the matters set forth in the District's written notice, provided that if the nature of the matters set forth in the District's notice reasonably requires more than seven (7) days to complete the cure, this Agreement shall not be terminated so long as Pacific Dining diligently prosecutes the cure to completion. If Pacific Dining fails to take cure actions set forth above or to diligently and completely prosecute cure actions, this Agreement shall be deemed terminated, without further action of the District or Pacific Dining as of the eighth (8th) day after the date of the District's written notice. Pacific Dining may terminate this Agreement upon written notice to the District of the District's default of a material obligation of the District under this Agreement. Upon Pacific Dining's issuance of the written notice pursuant to the foregoing, the District shall have seven (7) days to undertake and complete a cure of the matters set forth in Pacific Dining's written notice, provided that if the nature of the matters set forth in Pacific Dining's notice reasonably requires more than seven (7) days to complete the cure, this Agreement shall not terminate so long as the District diligently prosecutes the cure to completion. If the District fails to take cure actions set forth above or to diligently and completely prosecute cure actions, this Agreement shall be deemed terminated, without further action of the District or Pacific Dining as of the eighth (8th) day after the date of Pacific Dining's written notice.
- d. District Termination of Agreement for District Convenience. The District may, at any time during the Initial Term, by written notice to Pacific Dining, elect to terminate this Agreement for the District's convenience. The termination of this Agreement for the District's convenience shall be effective thirty (30) days after the date of the District's notice of termination of the District's convenience unless a longer period is set forth in the District's written notice.
- e. Contractor Termination of Agreement for Contract Convenience. Pacific Dining, at any time during the Initial Term, by written notice to District/LPC elect to terminate this Agreement for the Pacific Dining's convenience. The termination of this Agreement for Pacific Dining's convenience shall be effective one hundred and eighty (180) days after the date of Pacific Dining's notice of termination of Pacific Dining's convenience unless a longer period is set forth in Pacific Dining's written notice.
- f. Rights and Obligations Upon Termination of Agreement. Upon the expiration of the Initial Term, if the option of the Extended Term(s) is not exercised by Pacific Dining, expiration of

the Extended Term(s) if the option(s) therefore are exercised by Pacific Dining or the District's termination of this Agreement for Pacific Dining's default or the District's convenience, the rights and obligations of the District and Pacific Dining shall be as set forth below.

i. Pacific Dining Vacation of LPC Cafeteria. As of the date of the expiration of the Initial Term or the Extended Term(s), as applicable or as of the effective date of the District's termination of this Agreement for Pacific Dining's default or the District's convenience, Pacific Dining shall, at its sole cost and expense, remove all items of personal property owned or operated by Pacific Dining, except for the Pacific Dining Equipment/Fixtures. Any item of personal property remaining in, on, or about the LPC Cafeteria shall, as of the effective date of expiration of the Initial Term, the Extended Term(s), or the District's termination of this Agreement, shall be deemed the property of the District, and the District may thereafter dispose of such items of personal property without liability to Pacific Dining. Pacific Dining shall leave the LPC Cafeteria in a neat and orderly condition and in the same condition as when the LPC Cafeteria Improvements were completed, reasonable wear and tear accepted.

ii. Conveyance of Pacific Dining Equipment/Fixtures to the District. As of the date of the expiration of the Initial Term or the Extended Term(s), as applicable or as of the effective date of the District's termination of this Agreement for Pacific Dining's default, title to all of the Pacific Dining Equipment/Fixtures shall be deemed conveyed to the District, free and clear of claims, liens, or encumbrances of third parties. Pacific Dining shall, if requested by the District, execute such further instruments, including without limitation, one or more Bills of Sale, as reasonably necessary to effectuate the intent of this provision.

7. MISCELLANEOUS

- a. Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with California law. This Agreement shall be interpreted as a whole in accordance with its fair meaning and not strictly for or against Pacific Dining or the District. Marginal heading in this Agreement are for convenience of reference only and shall not enlarge or diminish any rights or obligations of the District or Pacific Dining.
- b. Cumulative Rights and Remedies. Duties and obligations set forth in this Agreement are in addition to and not in lieu of duties and obligations arising by operation of law and applicable to the transaction contemplated in this Agreement. No action or failure to act by the District shall be deemed a waiver of any right or remedy afforded the District under this Agreement or by neither operation of law nor a waiver of any default or breach by Pacific Dining of its obligations under this Agreement.
- c. Pacific Dining Independent Contractor Status. In performing its obligations under this Agreement, Pacific Dining is an independent contractor to the District and not an agent or representative of the District.
- d. Severability. If any term or condition of this Agreement is deemed invalid, unenforceable, or void by a court of competent jurisdiction, such term or conditions shall remain in full force and effect.
- e. Notices. Notices shall be addressed as follows:

If to District:

Chabot-Las Positas Community College District
Business Office
7600 Dublin Blvd., 3rd Floor
Dublin, CA 94568

If to Pacific Dining:
Richard McMahon
PO Box 6789
San Mateo, CA 94403
rick@pacific-dining.com

The recipients and addresses for notices may be modified by the Parties by notice to the other.

- f. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.
- g. No Assignment. Neither the District nor Pacific Dining shall assign this Agreement without the prior consent of the other. The District's consent to Pacific Dining's assignment may be granted, denied, or conditioned in the sole discretion of the District.
- h. Entire Agreement. This Agreement and the Attachments hereto as Exhibits "A" – "E" inclusive, constitute the entire Agreement and understanding between the Parties concerning the subject matter hereof. This Agreement supersedes and replaces all prior verbal and written negotiations, understandings, and/or agreements of the Parties relating to the subject matter hereof. This Agreement may be amended only by written instrument duly executed by or on behalf of the Parties.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date set forth above.

"DISTRICT"
CHABOT - LAS POSITAS
COMMUNITY COLLEGE DISTRICT
a California Community College District

"PACIFIC DINING"
Pacific Dining Food Service Management

Doug Roberts, Interim Vice Chancellor

Richard McMahon, President