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**Agreement for Bookstore Services  
between  
College of the Sequoias  
and  
Barnes & Noble College Booksellers, LLC**

**1. Engagement of Barnes & Noble College:**

College of the Sequoias hereby engages Barnes & Noble College Booksellers, LLC (“Barnes & Noble College”) to operate and provide services for the Bookstores of College of the Sequoias (the “Bookstores”) on the terms and subject to the conditions set forth herein, and Barnes & Noble College hereby accepts such engagement.

**2. Term and Termination:**

This Agreement shall govern the relationship between College of the Sequoias and Barnes & Noble College with regard to the Bookstores for the period July 1, 2018 through June 30, 2023 and from year to year thereafter.

College of the Sequoias and Barnes & Noble College shall have the right to terminate this Agreement at any time by giving one hundred and twenty (120) days written notice to the other party.

**3. College of the Sequoias Shall Provide to Barnes & Noble College at College of the Sequoias’s Expense:**

- a) Heat, light, utilities, and air conditioning as is reasonably required for operation of the Bookstores.
- b) Office equipment, safe, furniture, fixtures, file cabinets, telephone equipment and service (including campus telephones and wiring), and campus Wi-Fi available within the Bookstores.
- c) All repairs and maintenance for the buildings and the physical structures in which the Bookstores are located.
- d) Trash and recycling (cardboard) removal and extermination services for the Bookstores.
- e) All financial services made available by College of the Sequoias to its students for the purchase of educational materials and other products within the Bookstores.
- f) The placement of an electronic link on the College of the Sequoias’s home page, registration system, and within the College of the Sequoias’s learning management system (“LMS”) to the Bookstores’ web site.

**4. Barnes & Noble College Shall Provide to College of the Sequoias at Barnes & Noble College’s Expense:**

All operating expenses of the Bookstores including those related to:

- a) Employees, including payroll and payroll system costs, and employee benefits.
- b) Bill paying and accounting, including sales tax collection, reporting and payment for merchandise sold, except any property, excise, or municipal taxes on the Bookstores.
- c) Maintenance, upgrades and repair of technology systems within the Bookstores.

- d) General custodial services.
- e) Loss prevention services.
- f) Long distance telephone services through a vendor selected by Barnes & Noble College.

## **5. Management and Staff:**

Barnes & Noble College shall staff the Bookstores with experienced and qualified managerial and customer service personnel. During peak “rush” periods, Barnes & Noble College shall utilize sufficient additional employees at the Bookstores to avoid unnecessary lines and to expedite making educational materials available to students.

College of the Sequoias Bookstore personnel shall continue service only so long as their work and personal behavior are acceptable to Barnes & Noble College and College of the Sequoias. Barnes & Noble College will comply with written requests by College of the Sequoias to remove or reassign store personnel for good cause.

## **6. Staff Relations, Wages, and Benefits:**

Barnes & Noble College has the right to set its own wages and benefits for Bookstore employees. Barnes & Noble College will employ students of College of the Sequoias at the Bookstores whenever reasonably possible.

Barnes & Noble College agrees to hire Charles Slaght as Bookstore Manager, effective 3/21/18 and to retaining Karyl Johnson until her retirement-eligible date of June 30, 2019. Barnes & Noble College will reimburse the District for Karyl’s salary and benefit costs, including any step-increase or negotiated salary increase that may come in 2018-19.

## **7. Services Expected:**

Barnes & Noble College shall operate the Bookstores as an independent contractor and with its own credit and preferred vendors. Services of the Bookstores shall include the following:

- a) The Bookstores shall be College of the Sequoias’s exclusive retail buyer and seller of all required, recommended or suggested course materials and supplies, including books delivered in all formats (digital, rental, new, or used), course packs, interactive or other courseware, computer software containing learning content, textbook rentals, open educational resources (“OER”) available for purchase, and materials published or distributed electronically, through the LMS, sold over the Internet, or through hosted e-commerce links. Barnes & Noble College will provide exclusive on-line services through the Bookstores’ website including fulfillment of any distance learning material needs during the term of this Agreement.
- b) In order to expand affordability to students, Barnes & Noble College will work with College of the Sequoias if it opts to provide a “First Day” (inclusive access) program to its students. In such event, College of the Sequoias and Barnes & Noble College shall work together to negotiate publishers’ pricing of textbooks and course materials. Additionally, the parties acknowledge and agree (i) Barnes & Noble College shall be the exclusive retail (e-commerce) entity permitted to either place a link on the LMS or accept sales directly from College of the Sequoias students and/or as a fee added to tuition through the LMS and (ii) College of the Sequoias shall prohibit all third parties, including but not limited to publishers and sellers of textbooks and course materials, from placing direct links within the LMS or soliciting sales directly from College of the Sequoias students and faculty through the LMS. Finally, in the event any such third parties place a link

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on the LMS permitting direct sales of textbooks or course materials to College of the Sequoias students, College of the Sequoias shall remove and disable such links and retail functionality.

- c) The Bookstores shall be designated the exclusive agent to accept all campus debit card and financial aid transactions for bookstore merchandise typically sold in college bookstores. Payments for charge sales will be guaranteed by College of the Sequoias and are payable within 30 days of invoice date. Any unpaid balances days will be subject to 1% interest per month.
- d) The Bookstores shall also be College of the Sequoias's exclusive retail "on-campus" and Internet seller of other items typically sold in college bookstores, such as books in addition to those described in (a) above, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and clothing, including any and all such items bearing a College of the Sequoias emblem, logo, insignia or other identifying mark.
- e) COS Foundation will have the right to sell COS logo merchandise such as clothing, alumni rings, and small gifts including items bearing a College of the Sequoias emblem, logo, insignia or other identifying mark online only on the Foundation website, and at Foundation sponsored events (when applicable).
- f) COS Athletics will have the right to sell COS logo merchandise such as clothing, hats, jackets, shoes, championship rings, and sports-related items including items bearing a College of the Sequoias emblem, logo, insignia or other identifying mark online only on the COS Athletics website, and at Athletic events held on campus or off campus.
- g) College of the Sequoias shall not contract with any third party to provide any services of the type outlined in this Agreement whether on or off campus, through e-commerce sites, hyperlinks to alternate sources, or otherwise endorsed or supported by College of the Sequoias. College of the Sequoias acknowledges and agrees any attempt to circumvent Barnes & Noble College by entering into any verbal or written agreement or arrangement with a third party could materially and detrimentally impact the revenue stream of this Agreement. In such event, and in the event of materially reduced enrollment or elimination by College of the Sequoias of significant programs or departments, the parties agree to discuss the renegotiation of the financial terms of the Agreement.
- h) The Bookstores shall be the exclusive agent for the rental and/or sale of graduation caps and gowns and commencement invitations.
- i) The Bookstores shall also have a non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries.
- j) Barnes & Noble College will provide exclusive custom publishing services for College of the Sequoias. Such services will include the development of course packs for faculty members, securing the appropriate copyright clearances, printing and binding of course packs and distribution and sale of the course packs in the Bookstores. Complimentary desk copies of course packs will be provided to faculty members.
- k) Barnes & Noble College shall provide special book order services for students, faculty, and staff and make every effort to obtain the earliest possible delivery of such books.
- l) Barnes & Noble College shall provide charge sales for supplies for College of the Sequoias departments and offices. Payments for such charge sales shall be guaranteed by College of the Sequoias and payable within 30 days. Any unpaid balances will be subject to 1% interest per month.
- m) Barnes & Noble College will allow full-time faculty and staff of College of the Sequoias a 10% discount on all merchandise available at the Bookstores except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.

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- n) Barnes & Noble College will offer a 20% discount on all authorized departmental purchases except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
  - o) College of the Sequoias shall not accept advertising, permit tabling or other promotional activities by any seller of college textbooks and/or course supplies other than the Bookstores at any event sponsored by College of the Sequoias or located on the College of the Sequoias campus.
  - p) Barnes & Noble College will work with College of the Sequoias in new student orientation, alumni and faculty outreach through the Igniting the New Student Connection, Igniting the Alumni Connection and Igniting the Faculty Connection programs. To facilitate these programs, College of the Sequoias will provide Barnes & Noble College with all enrolled student, parent, alumni and faculty email lists on an annual basis.
  - q) Barnes & Noble College, in conjunction with College of the Sequoias, will implement Barnes & Noble College's Campus Connect Technologies, including but not limited to registration, student financial aid, LMS and FacultyEnlight integrations, and enrollment feeds.

## 8. Calculated Commission:

On an annualized basis, Barnes & Noble College will pay College of the Sequoias the following Calculated Commission:

**10.0%** of all gross sales up to **\$1,500,000**

**11.5%** of all gross sales over **\$1,500,000**

Gross sales is defined as all collected in-store and online/website sales and textbook rentals at the Bookstores, including the amounts earned from (i) processing transactions for publishers related to the rental of their property and (ii) Barnes & Noble College's marketing programs and relationships with its brand partners, less voids, refunds, sales tax, handling fees associated with non-return of rental textbooks, campus debit card fees, contractually discounted sales (such as discounted department and faculty/staff sales), pass-through income, merchandise sales at less than a 20% initial gross margin, and other merchandise mutually designated as non-commissionable.

If annual gross sales shall materially decrease as a result of legislation, conflicting or other campus agreements, material changes in College of the Sequoias policy or the business model of the industry (such as digital books or direct publisher sales), removal by College of the Sequoias of significant programs or departments, declining enrollment at College of the Sequoias (defined as decreased full- and part-time student enrollment of five percent (5%) or more over the prior year), or other reasons outside the reasonable control of Barnes & Noble College, College of the Sequoias agrees to negotiate in good faith with Barnes & Noble College on an appropriate reduction or other change to the Calculated Commission.

## 9. Payment Schedule:

The applicable Calculated Commission as set forth above hereof shall be made monthly by Barnes & Noble College to College of the Sequoias and shall be paid within thirty (30) days after the close of the month in which they were earned. The final payment for any year shall be made within thirty (30) days after the end of the applicable contract year and will include any adjustments required by the calculation set forth above.

Each payment shall be accompanied by a detailed statement of its computation and Barnes & Noble College shall furnish supporting documentation to College of the Sequoias upon request.

**10. Textbook Scholarships and Donations:**

Barnes & Noble College will provide **\$5,000** for annual textbook scholarships and donations to be awarded at the discretion of College of the Sequoias.

**11. Signing Bonus:**

Barnes & Noble College will provide a **\$50,000** one-time signing bonus to College of the Sequoias to be used at its discretion. Payment of the one-time signing bonus is contingent upon, and shall be made within ninety (90) days after, the successful implementation of Barnes & Noble College's Campus Connect Technologies, including but not limited to registration, student financial aid, and LMS and FacultyEnlight integrations, and enrollment feeds, and College of the Sequoias providing Barnes & Noble College all student email addresses (including incoming students) by agreed upon dates.

Barnes & Noble College will amortize the one-time signing bonus on a straight-line basis over the \_\_\_\_ year period of this Agreement. Should College of the Sequoias cancel or fail to renew this Agreement before the end of that period, then College of the Sequoias shall reimburse Barnes & Noble College for any amount of the investment not yet amortized.

**12. Final Approval of Renovations:**

In order to provide the best possible service for College of the Sequoias's students, faculty and other customers, final approval and necessary alterations of any store plans will be granted to Barnes & Noble College to ensure they meet with Barnes & Noble College's minimum operational and retailing standards.

**13. Sales Markup Basis:**

Barnes & Noble College represents that the sale markup basis at the Bookstores will be as follows:

- a) New textbooks will be sold at no greater than (i) the publisher's list price or (ii) a 25% gross margin on net priced books, inclusive of restocking fees. Net priced books are defined as books purchased from publishers that do not have a publisher's suggested list price or when the publisher's discount to the Bookstores is less than 20%.
- b) Used textbooks will be sold at or less than 25% of the new selling price.
- c) Course packs and textbooks purchased from publishers with restrictive or non-returnable text policies or are single use products will be priced at up to a 30% gross margin.
- d) Barnes & Noble College will set rental fees for each textbook title, and any given title's fee may vary as a percentage of the retail selling price.
- e) School supplies will be priced at or below manufacturers' suggested retail prices.

Barnes & Noble College shall, upon request, provide proof of conformity to pricing policies as specified herein.

**14. Calendar of Operating Hours:**

Barnes & Noble College shall maintain a schedule of operating hours and weeks of business for the Bookstores in accordance with the official College of the Sequoias calendar and in mutual agreement with College of the Sequoias in meeting the needs of the students, faculty and staff. The Bookstores' hours will be extended during each registration period, during the first two weeks of the fall and spring terms, and the first week of each summer session.

For Tulare and Hanford that the hours of operation will be the week before each fall/spring semester start and the first three weeks of each semester, six hours per day. Each campus location will also be staffed during finals week of each semester. Summer hours for these campus locations will be the first two weeks of each session.

**15. Book Orders and Deadlines:**

Barnes & Noble College shall fill orders for books and required supply items from term to term in accordance with textbook and supply adoptions by the faculty. The Bookstores shall be given notice by the faculty or authorized department designees of the textbook and supply adoptions for all courses offered as follows:

- a) On or before October 1 for the spring term.
- b) On or before March 1 for the summer sessions.
- c) On or before April 1 for the fall term.

Barnes & Noble College shall be responsible, at its cost and expense, for contacting in a timely manner all faculty members for their textbook and supply adoptions. College of the Sequoias shall not be responsible for compiling, nor shall it maintain, a list of such adoptions.

**16. Booklist:**

In the course of providing the services contracted for in this Agreement, Barnes & Noble College collects certain information from the faculty through its online research and adoption tool, FacultyEnlight, and/or on its Course Book Information forms. Barnes & Noble College also creates a computer database containing, among other things, course book information (all such information, the "Booklist"). These forms and the database are Barnes & Noble College's proprietary information, created at substantial cost and expense to Barnes & Noble College and used in connection with its business, the retail sale of textbooks.

Should College of the Sequoias require any information that may be contained within the forms or the database either for its educational purposes, or in order to comply with any public records request where no exemption is available (such as an exemption for commercial information), College of the Sequoias understands that it will be responsible for collecting that information from the faculty.

Subject to the "exclusive campus bookseller provision" set forth above, nothing set forth in this paragraph shall be construed to limit in any manner the right of any other off-campus vendor to use its own course book information form to obtain this information from the faculty.

**17. Used Book Purchase and Resale:**

Barnes & Noble College shall buy books from College of the Sequoias faculty, staff and students at the following prices:

- a) When the Bookstores have been notified that the book will be used at College of the Sequoias the following term: 50% of the customer's purchase price (provided the book is a good used copy) until the Bookstores have filled their quota.
- b) In the absence of such notification, or if the book will not be used for the following term, or is to be replaced shortly by a revised edition according to an announcement of the publisher, the book will be purchased at the wholesale price.
- c) Used books in good condition will be sold by Barnes & Noble College at 25% less than the new selling price.

**18. Refunds and Exchanges:**

Barnes & Noble College shall offer refunds and exchanges as follows:

- a) Textbooks and Required Course Materials

The Bookstores will issue refunds in the original form of payment for textbooks and required course materials purchased at the Bookstores if returned in the original condition, with an original receipt and within the first week of classes. Within 30 days of the first day of classes, textbooks and required course materials will be refunded with an original receipt and with a valid proof of add/drop.

- b) General Reading Books, Medical and Specialty Reference Books, Software, Audio, Video, & Small Electronics

The Bookstores will issue refunds in the original form of payment if returned in the original condition, with an original receipt and within fourteen (14) days of purchase. Opened software, audio books, DVDs, CDs, music and small electronics may not be returned for a refund but can be exchanged for the same item if defective.

- c) All Other Merchandise

The Bookstores will issue refunds in the original form of payment any time during the semester for other merchandise purchased at the Bookstores if returned in the original condition and with the original receipt. If without a receipt, a store credit will be issued at the current selling price.

Refunds or exchanges will not be issued for the following items: food and beverages, unwrapped loose leaf books or shrink wrapped titles which do not have the wrapping intact, digital content once accessed or activated, custom course materials, outlines, study guides, school guides, magazines, gift cards, phone cards, newspapers, magazines, and prepaid cards.

**19. Policy Posting:**

Barnes & Noble College shall post conspicuously policies concerning refunds, buybacks, and exchanges.

**20. Repurchase of Inventory**

College of the Sequoias shall repurchase, or require a successor contractor to purchase, Barnes & Noble College's inventory at cost in the event of cancellation of this Agreement, in the same manner as purchased by Barnes & Noble College.

In the event of cancellation of this Agreement, College of the Sequoias shall purchase, or require a successor contractor to purchase, Barnes & Noble College's rental inventory outstanding at the time of the transition, at the buyback value (50% of the retail price).

Should College of the Sequoias change logo or contracted athletic apparel provider/licensee, College of the Sequoias will either give Barnes & Noble College six months written notice or will allow Barnes & Noble College to automatically deduct from commissions due the cost of unsold emblematic merchandise.

**21. Access to Point of Sale (POS) Financial and Accounting Information:**

College of the Sequoias shall be provided access, with sufficient notice, to the Bookstores accounting records. This may include sales information captured by Barnes & Noble College's POS system. This will be done in compliance with PCI guidelines that protect card holder information. Store POS reports are available by register. All POS activity is verified daily by the Home Office Sales Audit system. In addition, all registers have:

- a) Transaction number controls with further security level restrictions by cashier type.
- b) Electronic Journal, receipt and detail tape provisions, with required PCI protection.
- c) Display window for customer viewing.

**22. Insurance:**

Barnes & Noble College shall procure at its own expense, and maintain during the existence of this Agreement, the following policies of insurance in connection with the operation of the Bookstores:

- a) Worker's Compensation and Employer's Liability Insurance and such other insurance as may be required under applicable state statutes.
- b) Comprehensive General Liability Insurance subject to \$3,000,000 limits.
- c) Property Damage Liability Insurance in the amount of \$1,000,000.
- d) Motor Vehicle Liability Insurance with limits of \$100,000 per person, \$300,000 per occurrence, and \$50,000 property damage.

At the request of College of the Sequoias, Barnes & Noble College shall obtain and deliver certificates evidencing such insurance from its insurers. Barnes & Noble College shall indemnify, defend, and save College of the Sequoias harmless from claims which may arise in connection with the operation of the Bookstore facilities specified herein and sales of products or performance of any service under this Agreement or injuries or death caused by Barnes & Noble College vehicles on the Bookstores' premises, except for claims caused by College of the Sequoias or any of its employees, agents or representatives, for which College of the Sequoias shall indemnify, defend, and save Barnes & Noble College harmless.



Barnes & Noble College's insurance policies for the Bookstores shall name College of the Sequoias as an additional insured, but only with respect to liability arising out of operations performed for such insured by or on behalf of the name insured.

### 23. General Terms and Conditions:

- a) Confidentiality. During the term of this Agreement, each party may be provided information that relates to the other party's financial, marketing, or customer information, research, development, business activities, products, services, technical knowledge, and personally identifiable student and employee information. To the extent permitted by law, including any public record disclosure law that may be applicable, all such information (including the Agreement itself) shall be deemed "Confidential Information". Each party may use the Confidential Information of the other party only in connection with the specific duties authorized by this Agreement and shall not, directly or indirectly, use, copy, disclose, or disseminate to any other person or entity any Confidential Information. Each party agrees to protect the confidentiality of the Confidential Information in the same manner that it protects its own confidential information but with no less than a reasonable standard of care. The obligations set forth herein shall not apply to any Confidential Information that becomes known to the public through lawful means and without violation of any law or agreement not to disclose such Confidential Information.

Each party further agrees it shall cause its personnel and representatives to agree to be bound by the terms of this Agreement and be responsible for any of their breach thereof. To the extent legally permissible, each party agrees to notify the other party of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure. If a party is required by an interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information, to the extent legally permissible, such party shall promptly provide written notice to the other party so the other party may seek to avoid or minimize the required disclosure or, in the discretion of the disclosing party, waive compliance with the provisions of this Agreement. The terms of this section shall survive the expiration or termination of this Agreement.

- b) Notices. All notifications pursuant to this Agreement shall be sent to the following individuals by certified mail or overnight delivery service:

College of the Sequoias  
**[Name, Title/Department, Address]**

Barnes & Noble College  
 Kim Otte  
 Vice President, Stores  
 2605 Sagebrush Drive, Suite 102  
 Flower Mound, TX 75028

with a courtesy copy to:  
 Barnes & Noble College Booksellers, LLC  
 120 Mountain View Blvd.  
 Basking Ridge, NJ 07920  
 Attn: Legal Department

- c) Environmental Matters. To the best of its knowledge, College of the Sequoias is not aware of any health or environmental problems which currently exist or are likely to develop in the buildings or physical facilities which house the Bookstores. College of the Sequoias shall be responsible for remedying promptly any health or environmental problem at the Bookstores, other than those caused by Barnes & Noble College, and notifying Barnes & Noble College accordingly.

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- d) Compliance with Laws. Barnes & Noble College and College of the Sequoias shall comply with all laws, ordinances, rules, orders, and regulations of federal, state and municipal governments, and of any and all of their departments, divisions, bureaus, and subdivisions, applicable to their performance under this Agreement.
- e) Independent Parties. The relationship established under this Agreement between College of the Sequoias and Barnes & Noble College is that of independent third parties. This Agreement shall not be construed to create a partnership, joint venture, agency, or other association between the parties or their respective employees. Unless otherwise provided in this Agreement, neither party nor its employees, agents, or subcontractors has any authority to bind or act on behalf of the other party.
- f) Marks. The names, trademarks, and logos of each party are the exclusive property of such party, and each party reserves all rights in and to its own marks. Each party shall use the marks of the other party only in connection with its performance under this Agreement, provided, however, Barnes & Noble College may use College of the Sequoias's name in any of its required public filings.
- g) Force Majeure. Barnes & Noble College and College of the Sequoias shall be excused for the period of any delay in performance of any obligations hereunder when prevented from doing so by the wrongful or negligent acts or omissions of the other party or by causes beyond either party's control, which shall include civil disturbances, extreme weather conditions, war, invasions, military or usurped power, sabotage, governmental regulations or controls (including bona fide delays in obtaining building and similar permits and approvals), fires or other casualty, or acts of God.
- h) Limitation of Liability. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY BARNES & NOBLE COLLEGE TO COLLEGE OF THE SEQUOIAS IN THE PREVIOUS SIX MONTHS (OR PORTION THEREOF IF THIS AGREEMENT HAS BEEN IN EFFECT LESS THAN SIX MONTHS) UNDER SECTION 8 OF THE AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, LOST USE, REVENUE, OR PROFIT, OR OTHER ECONOMIC LOSSES) EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- i) Waiver; Amendment. No change, modification or amendment of this Agreement shall be valid unless the same shall be in writing and signed by both parties hereto. No express waiver will affect any provision other than that to which the waiver is applicable and only for that occurrence. Failure or delay of a party to enforce any of its rights under this Agreement is not deemed a modification or a continuing waiver by such party of any of its rights hereunder.
- j) Headings and Interpretation. The headings used in this Agreement are for convenience only and do not constitute substantive matter to be considered in construing its terms. The use in this Agreement of the terms (a) "include", "includes", "including", and "such as" shall be deemed in all cases to be followed by the words "without limitation" and (b) "shall", "must", and "will" are equivalent and indicate mandatory and definitive requirements in all cases.

When used in this Agreement College of the Sequoias includes all segments of the institution including all alumni, athletic and academic departments.

This Agreement will be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either party.

- k) Severability. The presence in the text of this Agreement of any clause, sentence, provision, paragraph or article held to be invalid, illegal or ineffective by a court of competent jurisdiction shall not impair, invalidate or nullify the remainder of this Agreement. The effect of any such holding shall be confined to the portion so held invalid.
- l) Authority. Each party represents and warrants (a) it has all right, power, and authority to enter into this Agreement and to fully perform its obligations hereunder and (b) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.
- m) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all agreements, either oral or written, between College of the Sequoias and Barnes & Noble College with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure to the benefit of College of the Sequoias and Barnes & Noble College and their successors and permitted assigns.
- n) Signatures and Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but which together will constitute one and the same agreement. Counterparts and signed copies may be transmitted via electronic means and shall constitute originals for all purposes.

IN WITNESS WHEREOF, the parties, by signature below of their duly authorized agents, have executed this Agreement as of the last date written below.

**College of the Sequoias  
LLC**

**Barnes & Noble College Booksellers,**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**COLLEGE OF THE SEQUIOIAS COMMUNITY COLLEGE DISTRICT**  
**Board of Trustees Meeting**  
January 9, 2017

**CONSENT CALENDAR**

**6**

**Farming Operations Agreement with GR Farms, Inc.**

**Status:            Action**

Presented by:    C. Louann Waldner  
                          Provost, Tulare College Center

**Issue**

The district proposes to enter into an agreement with GR Farms to provide the farming, cultural practices, irrigation, maintenance and weed control for the District Farming Operations which includes 320 acres of farmland located at the Tulare College Center.

**Background**

GR Farms has been working with the District and Farm Operations Advisory Committee to provide the farming, irrigation, maintenance and related cultural practices as well as weed control and property oversight since 2010. The Farm Operations Committee, Provost and VP Administration have been engaged in reviewing, updating the agreement from the previous version to clarify roles and responsibilities of the District and GR Farms as well as review and update insurance policies and service fees. The agreement covers operative provisions including term of the agreement, obligations of GR Farms, fees for the various services and obligations of the district.

**Recommended Action**

It is recommended that COS Board of Trustees approve the Farm Operations Agreement with GR Farms, Inc. which will allow GR Farms to continue providing the services, including the farming operations and related weed control at the Tulare College Center, as outlined in the agreement.

Sequoias Community College District  
Tulare College Center Farming Operation

Agricultural/Farming Operations Agreement

THIS AGRICULTURAL/FARMING OPERATIONS AGREEMENT ("Agreement") shall be effective as of the TERM defined below and is made and entered into at Tulare County, California, by and between SEQUOIAS COMMUNITY COLLEGE DISTRICT ("District"), and GR FARMS, INC ("Farmer") to provide the farming, cultural practices, irrigation, maintenance, weed control in accordance with the provisions of this Agreement.

RECITALS

- A. SEQUOIAS COMMUNITY COLLEGE DISTRICT ("District") is the owner of 320 acres of farmland (collectively "**Premises**") located on that certain real property ("**Property**") located in the County of Tulare, California, APN: 184-080-10, commonly known as 12764 Avenue 224 Avenue, Tulare, California.
- B. For fees to be paid by District to Farmer as provided herein, District desires that the Farmer provide the farming, cultural practices, irrigation, maintenance, and weed control on the Property.
- C. Farmer is capable of performing farming, cultural practices, irrigation, maintenance, and weed control on the Property in accordance with the provisions of this Agreement for the District.

OPERATIVE PROVISIONS

NOW THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Farmer agree as follows:

- 1. **Term.** The term (the "Term") of the Agreement shall be one (1) year commencing on the Agreement Date. Notwithstanding the foregoing, this Agreement shall be automatically extended thereafter for consecutive periods of one (1) year, unless at least sixty (60) days prior to the expiration of the preceding one (1) year period, either Party notifies the other in writing of the termination of this agreement. If this Agreement is terminated or canceled pursuant to the provisions hereunder or by court order, the date of said termination or cancellation shall also be the substituted expiration date of this Agreement.
- 2. **Nature of Farming Operation Services.** The services provided by Farmer to District for farming purposes shall be as follows:

2.1 Farmers Obligations: During the Term, the Farmer shall act as the primary entity for the agricultural farming operation for the District. The Farmer shall devote such time, skill and efforts to the performance of its duties as required to farm and care for the agricultural operations of the Property in accordance with accepted agricultural practices of similar crops in Tulare County. Working with District (Provost, Tulare College Center and the Farming Operation Committee), the Farmer will provide the cultural practices associated with the farming operation and, in consultation with the District, shall oversee, care for and maintain the Districts farming operation and provide the following farming services, labor, materials and equipment:

A. Irrigation and Maintenance

1. Provide supervision and coordinate with the District for the maintenance and repair of irrigation pumps and wells.
2. Coordinate and provide crop irrigation labor in conjunction with District's instructional program needs.
3. Provide supervision and coordinate with the District for the maintenance and repair of irrigation pipelines.

B. Weed Control

1. Provide the labor and equipment for weed control on the farm ground perimeter to include roadways, water basins and other areas designated by the District (Provost or Chair, Farm Operations Committee). See Appendix A for map.
2. Provide the labor and equipment for weed control on campus property as designated by the District (Provost). See Appendix A for map.

C. Cultural Practices

1. Provide equipment, labor and supplies for the cultural practices associated with the Property and Farming Operations.
2. Grow and manage crops, spray for weeds and insects, and plan harvest for best possible resulting tonnage.
3. Coordinate subcontractors for the application of restricted pesticides or herbicides associated with the cropping patterns of the operation.

4. Coordinate subcontractors for the harvesting of crops as to timing and availability.

D. Marketing

1. Work with the District in marketing of farm commodities including contact and coordination with prospective buyers.

E. Meetings & Communication

1. Attend and report out at monthly Farm Operations Committee.
2. Weekly communication with the District (Provost) on farm operations.

F. Property Safety and Oversight

1. Farmers will communicate with the District regarding any trespassers, garbage dumping, suspicious activity or damage to property that is observed through the day-to-day work they do in farming the Property.
2. Farmers will communicate with the District regarding any safety issues observed included but not limited to damaged property, lights or trespassers.
3. The District will rely upon Farmer to assist the district in providing supervision and security for the farming and educational operations. Working with the District through the Provost and Farm Operations Committee, Farmer will work cooperatively to provide those unique oversight activities associated with a farming operation and agricultural facility.

2.2 Limitation of Farmer Obligations. Farmer shall have no obligation, duty, responsibility or liability for any damages arising out of (i) injury, disease or damage to any tree, or (ii) damage or failure of any crop, which is due to frost, wind, disease, lack of water (whether caused by the failure to pay for utilities or failure of the applicable water company, irrigation district, any well, or transportation facility on the Property to deliver adequate quantities of water to the Property, on the Property or otherwise or by act of God) or any other cause other than the sole negligence of Farmer.

### **3. Payment of Fees and Charges**

- 3.1 General. Farmer will provide the District an itemized bill for work performed on the COS farming operation on a monthly basis. Working with the Provost, the Farmer will perform duties incurred during the normal cultural practices performed and other duties as agreed to by the Provost at a rate agreed to by both parties as outlined in Appendix B. Itemization of billing will coincide with the COS accounting procedures.
- 3.2 Additional Charges. In the event that the Farmer is directed to perform any service or covers the expense of any service or material set forth in Section 3.2 above, or performs any other service or provides any other material, District shall pay Farmer in full for such services or expenses within thirty (30) days of receipt of a written invoice from Farmer.
- 3.3 Extension. In the event this Agreement is extended pursuant to Section 1, all terms and conditions hereof shall continue in full force and effect, except the base management fee set forth in Section 4.1 may be adjusted by Farmer, if agreed to by District, to reflect competitive charges for such services then prevailing.
- 3.4 Insurance. The Farmer shall provide District with certificates of insurance evidencing all coverages and endorsements required hereunder. All policies shall be in a form mutually acceptable to both parties to protect the Farmer and District against liability or claims of liability which may arise out of this Agreement.
  - A. The Farmer shall carry an errors and omissions liability policy with the limits of One Million Dollars (\$1,000,000) per occurrence. In addition, the Farmer agrees to provide a certificate of endorsement to the errors and omissions liability, naming the District.
  - B. The Farmer shall provide proof of Farmer's Comprehensive Personal Liability Insurance. Farmer will provide the District with a \$1,000,000 Liability Insurance Policy.
  - C. The District shall carry and maintain public liability and property damage insurance with limits of not less than \$2,000,000 per occurrence. District shall furnish certificates from its joint powers authority showing that coverage is in full force and effect upon request.
  - D. District and Farmer will hold each other harmless, defend and indemnify their respective agents, officers, and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage



to property, arising out of the activities of District or Farmer or their agents, officers, and employees under this agreement. This indemnification will be provided by each Party to the other Party regarding its own activities undertaken pursuant to this agreement, or as a result of the relationship thereby created, including any claims that may be made against either Party by any taxing authority asserting that an employer-employee relationship exists by reason of this agreement, or any claims made against either Party alleging civil rights violations by such Party under Government Code section 12920, *et seq.* (California Fair Employment and Housing Act). This indemnification obligation will continue beyond the term of this agreement as to any acts or omissions occurring under this agreement or any extension of this agreement.

4. **Notices** Any notice or demand to be given to District or Farmer pursuant to the terms of this Agreement, or by law, shall be deemed to be fully given or made when written and (1) personally served; (2) sent by certified mail, return receipt requested, postage prepaid, and addressed to District or Farmer; or (3) nationally recognized overnight courier service and shall be deemed delivered upon the date received or with respect to delivery by mail or courier service, upon the date delivery is attempted but refused. If a party receives a notice on any day which is not a Business Day, the notice shall be deemed received on the next Business Day at the address set forth below:

TO FARMER:  
Rob Fletcher  
GR Farms, Inc.  
12685 Ave 200  
Tulare, CA 93274

TO DISTRICT:  
Christine Statton,  
VP, Administrative Services  
College of Sequoias CCD  
915 S. Mooney Blvd  
Visalia, California 93277

Any address or name may be changed by notice in accordance with this section. The inability to deliver because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the legal counsel for such party.

5. **Termination of Agreement.**

Termination of the agreement can occur without cause by either Party and will be provided with a written notice. Termination of the agreement will require a minimum of a sixty (60) day written notice.

**6. Use of Premises.**

6.1 The Farmer shall have access to the District Property hereafter referred to as the Farming Operations Shop for equipment storage and use related to the Farming Operations of the District Property. The Farming Operations Shop is not available for storage of other equipment owned by Farmer but not related to farming operations of the District Property. The use of the premises will continue without charge until the time the District Instructional Programs have a use for the facility. Sixty (60) day advance notice will be provided in the event that the District needs to take back the Farming Operation Shop.

6.2 During the time the Farmer has exclusive use of the shop, the Farmer shall:

A. Maintain the shop in its current condition, ordinary wear and tear excepted.

B. Promptly repair, at Farmer's sole cost and expense, any damage, any damage caused to the Premises or any of the improvements, facilities, or works that are on, appurtenant to, or about the Premise.

6.3 The Farmer can make arrangements to use or rent District equipment and facilities as agreed upon by both parties. Both parties shall agree to costs or rental fees prior to use of either equipment or facilities.

6.4 The Farmer agrees that the District does not have any liability from theft or vandalism for any of Farmer's equipment that is housed or parked on District Property.

**7. Acknowledgment.** Each party acknowledges having carefully and thoroughly read this agreement in full, and fully understands each of its terms and conditions, and therefore signs it freely and voluntarily. Each party agrees that said party has reviewed and has had the opportunity to revise this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement or any amendments or exhibits hereto.

**8. Agreement Date.** The date on which the last of the parties hereto executes this Agreement as such date is shown by the signature of the parties below, shall be the date of this Agreement and shall be referred to herein as the "Agreement Date."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below their respective signatures.

'DISTRICT'  
Sequoias Community College District  
Christine Statton  
VP, Administrative Services  
915 S. Mooney Blvd.  
Visalia, CA 93277

Signature: \_\_\_\_\_

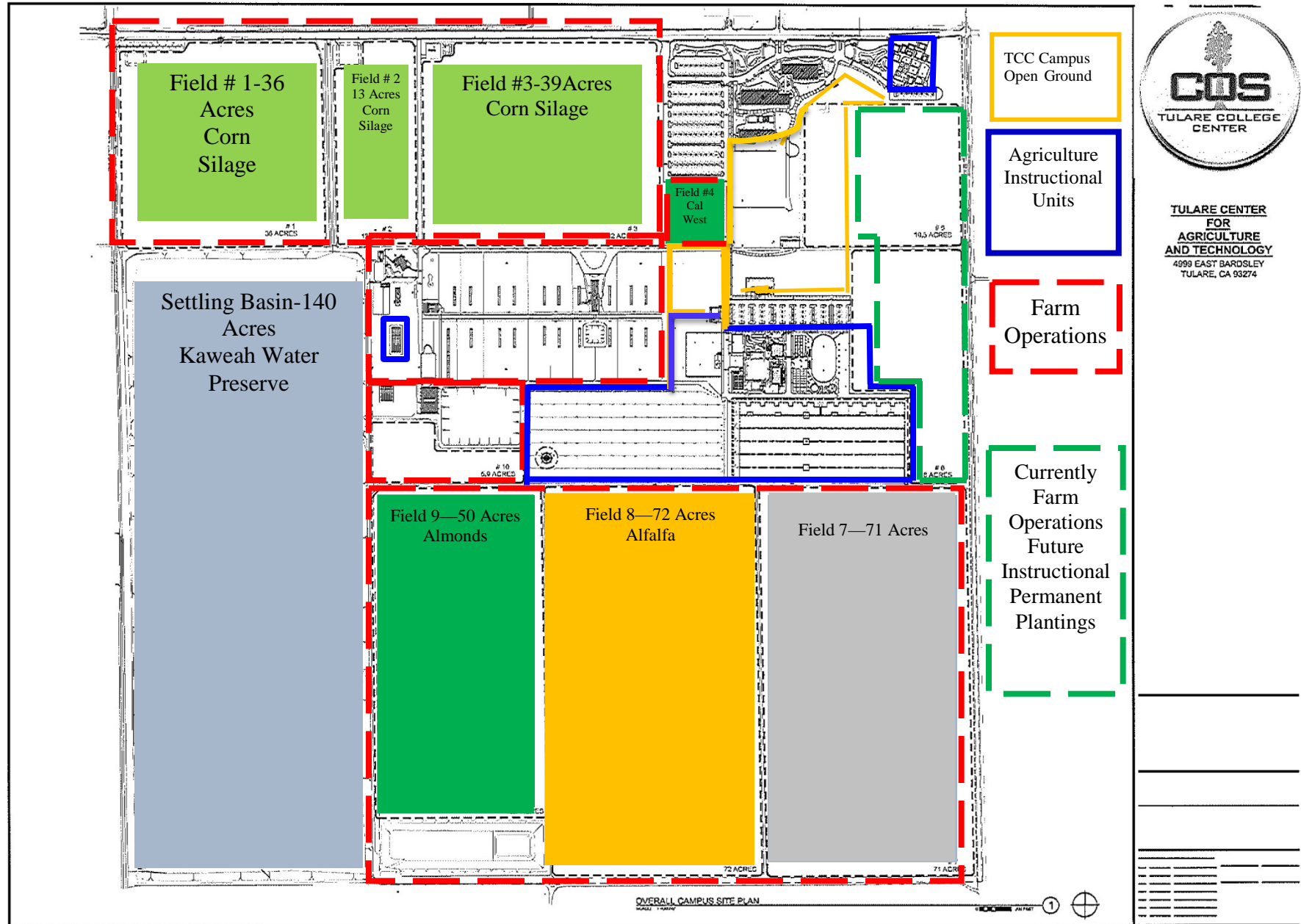
Date: \_\_\_\_\_

'FARMER'  
GR Farms, Inc.  
Rob Fletcher  
12685 Ave 200  
Tulare, CA 93274

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# Appendix A-Tulare College Center Campus and District Farming



College of the Sequoias  
Farming Operations  
2016 Machine Hire Rates

ROW CROP RATES

Job Descriptions	Rates	
Planting Standard Row Crop	\$25.00	per acre
Planting Standard Row w/Fertilizer	\$28.00	per acre
Strip Till Plant w/fertilizer	\$38.00	per acre
Strip Till Plant w/o fertilizer	\$32.00	per acre
Strip Till w/fertilizer	\$40.00	per acre
Strip Till w/o	\$38.00	per acre
Cultivating	\$20.00	per acre
Sidedressing Fertilizer/Bar (Furrow)	\$20.00	per acre
Sidedressing Fertilizer/Bar Only	\$18.00	per acre
Bedding (10 Row 30" / 38")	\$21.00	per acre
Mulching Beds	\$25.00 - \$28.00	per acre
Cultipacking Only / Harrow	\$15.00	per acre
Discing Stubble - Medium	\$20.00	per acre
Discing Stubble - Medium w/Roller	\$24.00	per acre
Discing Stubble - Heavy	\$60.00	per acre
Disc Bedding	\$22.00	per acre
Planting Grain	\$18.00	per acre
Plowing	\$45.00	per acre
Springtooth	\$20.00	per acre
Chisel "Big Ox" w/ Wheel Tractor 9400T	\$70.00	per acre
Chisel "Big Ox" w/ Tractor 8500T	\$60.00	per acre
Landplaning	\$20.00	per acre
Row Pack	\$15.00	per acre
Grader Board	\$18.50	per acre
Grader Board / Border Flip	\$40.00	per acre
Borders w/GPS	\$12.00	per acre
Borders with Block	\$14.00	per acre
Border Tear Down	\$10.00	per acre
Circle Harrow / Roller	\$18.50	per acre
Grader	\$95.00	per hour
Backhoe	\$90.00	per hour
Water Truck	\$70.00	per hour
Water Truck - Annual	\$65.00	per load
Mulchmaster	\$22.00	per acre
Cutting Hay	\$16.00	per acre
Rake 4 into 1	\$10.00	per acre
Rake 3 into 1	\$8.00	
Cutting Wheat/Forage	\$20.00	per acre
Rake Hay	\$6.50	per acre
Rake Wheat Forage	\$10.00	per acre
Bale Hay (Small Bales)	\$1.20	per bale
Turning Hay	\$5.00	per acre
Laser Level Double	\$180.00	per hour
Single	\$165.00	per hour
Misc. Tractor - Equipment	\$85.00	per hour
Spray Weeds/ Edges	\$75.00	per hour
Ditches Alfalfa	\$10.00	per acre
Corn	\$12.00	per acre
Wheat	\$10.00	per acre
GPS Border Alfalfa/Grain	\$30.00	per acre
Pipeline Repair	\$125.00	per leak
Row Crop Irrigation	\$13.00	per Irr. Per ac

College of the Sequoias Farming  
Operations  
2016 Machine Hire Rates

ORCHARD RATES

Job Descriptions	Rates	
Forklift	\$150.00	per day
Grader	\$95.00	per hour
Backhoe	\$90.00	per hour
Water Truck	\$65.00	per load
Misc. Tractor - Equipment	\$85.00	per hour
V Level	\$18.50	per acre
Schmeiser Level	\$20.00	per acre
Spray Almonds / Air Sprayer - 200 gal.	\$40.00	per acre
Spray Almonds / Air Sprayer -100 gal.	\$35.00	per acre
Spread Gypsum/ Compost	\$20.00	per acre
Disc Trees	\$18.00	per acre
Harvest Almonds	\$300.00	per acre
Almond Conditioner	\$40.00	per acre
Sweeping Mummy	\$50.00	per acre
Mummy Shake	\$90.00	per acre
Tree Mowing	\$20.00	per acre
Blowing Berms for Winter Spray	\$25.00	per acre
Spraying - Ant Bait Appl.	\$11.00	per acre
Spray Solid Tree to Tree	\$22.00	per acre
Spraying Tree Berms	\$20.00	per acre
Throwing Trees	\$20.00	per acre
Throwing Potted	\$35.00	per acre
Throwing Stakes	\$25.00	per acre
Tanking Trees(water truck)	\$35.00 - \$50.00	per acre
Condition Tree Berms	\$12.00	per acre
Labor includes Work. Comp.	\$17.00	per hour
Spraying Edges	\$75.00	per hour
GPS Border Tree	\$30.00 - \$40.00	per acre
Pipeline Repair	\$125.00	per leak
Irrigation - atv	\$150.00	per day
Irrigation Trees	\$12.00	per mo. Per ac

## SPONSORSHIP AGREEMENT

This sets forth the agreement ("*Agreement*") between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 1150 North Avenue, Fresno, CA ("*Pepsi*") and College of the Sequoias, with its principal place of business at 915 S. Mooney Blvd., Visalia, CA 93277 (the "*Customer*").

**WHEREAS**, Pepsi desires the right to be the exclusive supplier of Beverages (as defined below) to the Customer; and

**WHEREAS**, Pepsi has submitted a proposal to the Customer for the exclusive right to develop and carry out a program for the sale of its beverage products in all facilities owned or operated by the Customer; and

**WHEREAS**, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the Customer has determined that it is in the best interests of the Customer to contract with Pepsi to provide services for the sale of beverage products; and

**WHEREAS**, Pepsi wishes to identify itself with the Customer and to have its products promoted and sold at the Facilities (as defined below) as set forth in this Agreement; and

**NOW, THEREFORE**, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS.

"*Approved Cups*" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi's trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi's trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi.

"*Beverage*" or "*Beverages*" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate teas ("*LCT*"), (ix) frozen carbonated and non-carbonated beverages ("*FB*"), and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

"*Cases*" shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

**“Competitive Products”** shall mean any and all Beverages other than the Products.

**“Customer Marks”** shall mean (i) the Designations (as defined below) and (ii) the Customer’s characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the Customer and which relate to the Facilities and which are in existence on at the beginning of the Term or which will be created during the Term. For clarity purposes, Customer Marks shall include, without limitation, characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations associated with or related to all intercollegiate athletic teams associated with the Customer, at the beginning of the Term or which will be created during the Term, if any.

**“Designations”** shall include, but not be limited to, the following: “A Proud Sponsor of the College of the Sequoias,” “Official Water and Soft Drink of the College of the Sequoias” and “Official Sponsor of the College of the Sequoias.”

**“Equipment”** means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) full service vending machines (**“Vending Machines”**); (ii) retail single-serve food service equipment and (iii) fountain service equipment.

**“Facilities”** shall mean the entire premises of the main campus and administrative offices in Visalia, CA as well as the satellite campuses in Hanford, CA and Tulare, CA (and any additional campuses opened during the Term), including with respect to each campus, every facility owned, leased, occupied or operated by the Customer or its Food Service Provider, now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. **“Facilities”** shall also be deemed to include convenience store operations and restaurants initiated during the Term of this Agreement in space leased to third-party commercial tenants within Customer-owned buildings.

**“Food Service Provider”** shall mean all food service providers which may serve at the Facilities at any point during the Term. The Customer acknowledges and agrees that this Agreement, including the pricing, funding and other consideration provided for herein is based on the Customer’s current operating model/use of third party Food Service Providers. Thus, in the event that: (i) if the Customer is currently self-operated, the Customer switches to a Food Service Provider, or (ii) if the Customer currently uses a Food Service Provider to operate its concessions, such agreement between the Customer and the current Food Service Provider expires or is terminated, and the Customer enters into a new arrangement with a Food Service Provider; then any such new or subsequent agreement between the Customer and any Food Service Provider (pursuant to either (i) or (ii) above) shall require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement to the exclusion of all other benefits, and shall specifically require such Food Service Provider to affirm that it will not be entitled or seek to receive any funding or other benefits/consideration in connection with any agreement such Food Service Provider may separately have with Pepsi or Pepsi’s affiliates. In the event that the Customer fails to adhere to this requirement (or the Food Service Provider refuses to abide accordingly), then Customer hereby authorizes Pepsi, and Pepsi shall be entitled to adjust its pricing,





funding or other consideration provided to the Customer by an amount equal to the incremental costs incurred by Pepsi as a result of the Customer's change in Food Service Providers.

"**Gallons**" shall mean the number of gallons of the Postmix Products purchased by the Customer from Pepsi.

"**Packaged Products**" shall mean Beverages that are distributed in pre-packaged form (*i.e.*, Bottles & Cans). A current list of Pepsi's Packaged Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

"**Postmix Products**" shall mean beverage products used to create and dispense fountain beverages. A current list of Pepsi's Postmix Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

"**Products**" shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed by Pepsi.

"**Year**" shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

## 2. TERM.

The term of this Agreement shall be for a five (5) year period beginning on January 1, 2017 and expiring on December 31, 2021 unless sooner terminated as provided herein ("**Term**").

## 3. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.

During the Term, Customer hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

### A. Beverage Availability at the Facilities.

#### (1) Grant of Rights.

(a) Except with regard to the Permitted Exception set forth below, Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including the right to provide all Beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at or any location on the Facilities ("**Special Events**"). The Products shall be the only Beverages sold, dispensed or served at the Facilities (*i.e.*, at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities. Notwithstanding the foregoing, Pepsi agrees to the following limited exception to its exclusive Beverage rights at the Facilities ("**Permitted Exception**"): Customer may make freshly prepared tea and coffee drinks available at the campus coffee shop; and



(b) Pepsi shall have the exclusive right to install the Equipment throughout the Facilities. Pepsi shall have the further right to install additional Equipment in buildings and facilities acquired and/or constructed by the Customer after the date of this Agreement. Pepsi shall install the Equipment at its sole expense; *provided, however*, that the Customer will be responsible for all electrical hook-ups and charges related thereto. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer or the Food Service Provider from Pepsi at the prices established by Pepsi from time to time. Current pricing for Postmix Products is as set forth in Exhibit A attached hereto.

(3) Purchasing of Packaged Products.

The Packaged Products shall be purchased by Customer or the Food Service Provider from Pepsi at prices established by Pepsi from time to time. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto.

(4) Food Service.

During the Term, Pepsi shall work directly with, Customer and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. Customer shall cause its Food Service Provider to purchase the Product from Pepsi at prices as determined by Pepsi. The Customer shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with Customer and its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense.

(5) Minimum Equipment Requirements.

Pepsi shall have the exclusive right to place Beverage Vending Machines at the Facilities for dispensing the Products; *provided, however*, that Pepsi shall work with Customer to identify optimal locations for such equipment. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines or any other Equipment. Pepsi shall have the exclusive right to place fountain dispensing equipment, single serve coolers and all other Beverage dispensing Equipment at the Facilities. Customer agrees to place at least one (1) floor merchandiser rack at the Café located in the food court in Visalia and at the Student Union Café in Visalia.



B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, Customer grants Pepsi the exclusive right to merchandise Beverages at the Facilities as set forth and described below:

(1) Menu Board Advertising.

Customer agrees that Pepsi's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for menu boards set forth herein will be prepared and installed by Customer at Customer's sole cost and expense.

(2) Approved Cups; Product Hawking and Catering.

Customer agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. Pepsi agrees to make Approved Cups available for purchase and the Customer shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi. Notwithstanding the foregoing, Pepsi acknowledges and agrees that student club sale days known as "intercultural day" and "student club day" are not restricted by the terms of this Section. To the extent that Customer may determine in its sole discretion to hawk Beverages at the Facilities, Customer shall allow only Products purchased directly from Pepsi to be "*hawked*" at the Facilities. and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. Customer further agrees that Products to be "*hawked*" in the stands shall be sold only in Approved Cups. As used herein, "*hawking*" shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

4. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.

During the Term, Customer hereby grants to Pepsi the right to advertise and promote Products in and with respect to the Customer and the Customer Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. Advertising

(1) Facilities and Print Advertising.

Pepsi shall have the right to Facilities and print advertising as mutually agreed between the parties and as further outlined in Exhibit B.

(2) Design and Installation of Customer Advertising.

To the extent that Pepsi and Customer mutually agree to display permanent Pepsi signage at the Facilities, Pepsi agrees, at its own cost, to provide Customer with the general design of all Customer Advertising. To the extent that Pepsi and Customer mutually agree to display permanent Pepsi signage at the Facilities, the Customer Advertising shall be constructed and installed by Customer (or an agent thereof) at Customer's sole cost and expense. All Customer Advertising shall be in conformity with the general scheme and plan of the Customer and the surrounding areas.

(3) Advertising/Signage Changes/Removal.

Customer recognizes Pepsi's right to change, modify, alter or remove its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Pepsi shall reimburse Customer for all reasonable costs and expenses incurred by Customer in changing, modifying, altering or removing any Facilities Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi's changes to or removal of the advertising, trademarks or trade names, designations or identification thereof. Pepsi shall have the right to modify, change, alter or remove the promotional messages appearing thereon and all such modifications, changes, alterations and/or removals shall be at Pepsi's sole cost and expense. Customer shall use reasonable efforts to minimize the cost to Pepsi for changing, modifying, altering and/or removing Pepsi's advertising.

(4) Maintenance of Signage.

Customer shall maintain all Facility Advertising and other signs and advertising for Products in good order. Customer shall effect any necessary repairs reasonably determined by Customer at Customer's sole cost and expense. Where practical, Customer shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

B. Promotional Rights.

(1) General Sponsorship Designation.

Customer hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Customer and its intercollegiate athletic teams, if any, and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.



(2) Grant of License to Use the Customer Marks for Promotional Activities.

Customer hereby grants to Pepsi a nonexclusive license to use the name of the Facilities and the Customer Marks for the limited purposes of promoting Products within the context of promotional activities. Customer acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi may conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi's food service accounts and customers.

C. Representations, Warranties and Covenants regarding the Ownership and Protection of the Customer Marks and Related Proprietary Rights.

Customer represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Customer Marks (including without limitation, all goodwill associated therewith) and Pepsi's use of the Customer Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title or interest to the Customer Marks other than the right to use such Customer Marks granted under this Agreement. Pepsi (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of Customer and its affiliates and cooperate with Customer and its affiliates to procure any protection or to protect any of the rights of Customer and its affiliates in and to the Customer Marks. Pepsi shall cause to appear on all materials incorporating the Customer Marks such legends, markings and notices as Customer or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Customer Marks. Pepsi shall not make any alterations or changes to the design or type of the Customer Marks without the prior written consent of Customer.

D. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "**Pepsi Marks**") under a license from PepsiCo, Inc. Customer acknowledges that nothing contained in this Agreement shall provide Customer with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. Customer (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its affiliates and cooperate with PepsiCo, Inc., Pepsi and its affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its affiliates in and to the Pepsi Marks. Customer shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.



5. GRANT OF OTHER RIGHTS.

A. Sampling.

Customer agrees to permit to conduct, at Pepsi's sole cost and expense, limited sampling of Pepsi products at the Facilities in a form and manner as specifically authorized and approved by Customer and in accordance with rules and procedures established by Customer, in its sole discretion, as may be amended or supplemented from time to time by Customer.

B. Additional Rights.

Customer agrees to provide Pepsi with the additional rights set forth on Exhibit B.

6. EXCLUSIVITY.

A. During the Term, except with regard to the Permitted Exception set forth in Section 3(A)(1)(a), Customer, its agents, representatives, intercollegiate athletic teams coaches and players, and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the Customer, its intercollegiate athletic teams coaches and players, and its staff and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the Customer, intercollegiate athletic teams coaches and players, and its staff.

B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, and/or Customer Marks with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, "**Ambush Marketing**" shall mean an attempt by any third party, without Pepsi's consent, to associate Competitive Products with the Facilities, Customer and/or Customer Marks, or to suggest that Competitive Products are endorsed by or associated with the Facilities, Customer and/or Customer Marks by referring directly or indirectly to the Facilities, Customer and/or Customer Marks.

7. CONSIDERATION.

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by Customer as described herein, and provided Customer is not in breach of this Agreement, Pepsi agrees to pay to Customer:

A. Annual Sponsorship Fees.

An Annual Sponsorship Fee (the "**Annual Sponsorship Fee**"), payable annually pursuant to the following:



<i>Year</i>	<i>Applicable Time Period</i>	<i>Amount</i>	<i>Due Date: within 60 days after:</i>
1	January 1, 2017 – December 31, 2017	\$35,000	Execution of Agreement by parties
2	January 1, 2018 – December 31, 2018	\$35,000	January 1, 2018
3	January 1, 2019 – December 31, 2019	\$35,000	January 1, 2019
4	January 1, 2020 – December 31, 2020	\$35,000	January 1, 2020
5	January 1, 2021 – December 31, 2021	\$35,000	January 1, 2021

\* The Customer acknowledges and agrees that each Annual Sponsorship Fee payable to the Customer is based on a minimum number of Units purchased from Pepsi and sold throughout the Facilities pursuant to this Agreement during the applicable Year. The minimum number of Units per Year is 6,900 (“*Annual Units Threshold*”). As used herein, “*Units*” means Gallons and Cases. For the purposes of determining Units sold, 1 Case shall equal 1 Gallon. Therefore, if during any Year the number of Units falls below the Annual Units Threshold, then the Annual Sponsorship Fee payable for the next Year will be reduced by a percentage equal to the percentage decrease between the Annual Units Threshold and the actual number of Units sold during such Year. *For example, if during Year 1 the actual Units purchased from Pepsi are 6,000 Units, then the Annual Sponsorship Fee for Year 2 will be \$30,435.* If there is a shortfall in the final Year of the Term, the unearned portion of the Annual Sponsorship Fee for such Year will be deducted from Rebates payable for such Year.

The Annual Sponsorship Fee is earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the Customer’s failure to cure a breach hereof, the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 10.D herein.

B. Commissions.

Commissions, as a percentage of the actual cash (“*cash in bag*” or “*CIB*”) collected by Pepsi from the Vending Machines placed at the Facilities, plus actual amounts received by Pepsi in connection with credit card or debit card sales (collectively with CIB, “*Revenue*”), less any applicable fees or deposits (“*Commissions*”). Such Commissions shall be at the rate(s) set forth below (the “*Commission Rate*”) and shall be calculated as follows:

$$(\text{Revenue} * \text{Commission Rate}) - \text{applicable CRV} = \text{Commission Due}$$

<i>Product</i>	<i>Minimum Vend Price</i>	<i>Commission Rate*</i>
20 oz. Carbonated Soft Drinks	\$1.75	30%
20 oz. Aquafina	\$1.75	30%
20 oz. Lipton Products	\$1.75	30%
Kickstart	\$1.75	30%
20 oz. Gatorade	\$2.00	30%
16 oz. Rockstar	\$2.75	30%

\*Commission Rate stated above shall only apply to Products sold by Pepsi through its Vending Machines at the beginning of the Term. If Pepsi proposes any new Products to the Customer during the Term, then Pepsi shall have the right to apply a different Commission Rate and/or Minimum Vend Price for such new Product.

(1) Commissions Payment. Commissions shall be remitted by Pepsi to the Customer within thirty (30) days of the end of each 4-week accounting period established by



Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within one (1) year of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi if Commissions fail to reach a certain threshold amount per period or quarter. The applicable threshold amounts vary based on the payment period and will be established and communicated pursuant to Pepsi’s policies and procedures related to its Full Service Vending business, as may be revised by Pepsi from time to time.

(2) **Change to Commission Rate.** Customer acknowledges and agrees that Pepsi established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Agreement. If, during the Term, applicable sales taxes should increase by more than five percent (5%), then Pepsi shall have the right to automatically reduce the Commission Rate by the same percentage amount.

(3) **Change to Commission Formula.** In addition to the above, Customer agrees that Pepsi shall have the right to change its formula/method for calculating Commissions at any time in its reasonable discretion provided that any such formula adjustments shall not result in a change to the Commissions due with respect to the same sales of Products that is less than 25% or greater than 35%.

(4) **Vend Price.** The minimum vend price necessary for Customer to qualify for any Commissions is set forth above. Pepsi shall have the right to change such vend prices as it deems appropriate in light of cost of goods increases or to otherwise stay reasonably consistent with applicable vending prices for similar accounts operating in the relative geography.

C. **Rebates.**

Each Year throughout the Term, Pepsi shall calculate the total applicable Cases of Packaged Products purchased from Pepsi by the Customer and its Food Service Provider pursuant to this Agreement, and shall provide the Customer with rebates calculated based on the amount set forth below (the “***Rebates***”). The Rebates shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term.

<i>Rebate Amount</i>	<i>Applicable Products</i>
\$0.75/Case	Cases of Packaged Products

8. **ADDITIONAL CONSIDERATION.**

In addition to the consideration specified above, and provided Customer is not in breach of this Agreement, Pepsi shall provide the following further consideration to the Customer:





A. Product Donations.

Pepsi will provide annual Product donations of up to a total of 325 cases of a combination of 12 oz. cans of carbonated soft drinks and 16.9 oz. bottles of Aquafina per Year across the Facilities upon request of the Customer; *provided, however*, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year.

B. Gatorade Merchandise Support.

Each Year during the Term, Pepsi shall provide Customer with Gatorade sideline merchandise valued at up to One Thousand Two Hundred Dollars (\$1,200) (“***Gatorade Merchandise Support***”). The Gatorade Merchandise Support will be held by Pepsi, and accessed by Pepsi to offset the cost of Gatorade sideline merchandise provided to Customer. Customer acknowledges and agrees that unused Gatorade Merchandise Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

C. Marketing Program Support.

Each Year during the Term, Pepsi shall provide Customer with marketing support valued at up to One Thousand Five Hundred Dollars (\$1,500) per Year (“***Annual Marketing Program Support***”). The Annual Marketing Program Support will be held by Pepsi, and accessed by Pepsi to pay for point-of-sale materials and promotional programs in support of sale of the Products at the Facilities. Utilization of the Annual Marketing Program Support will be mutually agreed to by the parties. Customer acknowledges and agrees that unused Marketing Program Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

D. Sustainability Program Support.

In Year One and in Year Four (and only in such Years), Pepsi shall provide Customer with support for Customer’s sustainability initiatives valued at up to Two Thousand Dollars (\$2,000) (“***Sustainability Program Support***”). The Sustainability Program Support will be held by Pepsi, and accessed by Pepsi to pay for sustainability initiatives requested by Customer. Utilization of the Sustainability Program Support will be mutually agreed to by the parties. Customer acknowledges and agrees that unused Sustainability Program Support will not be redeemable for a cash payment.

E. Flex Fund Support.

Each Year during the Term, Pepsi shall provide Customer with flex fund support valued at up to Two Thousand Five Hundred Dollars (\$2,500) per Year (“***Flex Fund Support***”). The Flex Fund Support will be held by Pepsi, and accessed by Pepsi to support Customer sponsored programs. Utilization of the Flex Fund Support will be mutually agreed to by the parties. Customer acknowledges and agrees that unused Flex Fund Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.



9. EQUIPMENT AND SERVICE.

A. Beverage Dispensing and Other Equipment.

(1) Pepsi shall, based upon Pepsi’s survey of the Facilities’ needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates.

(2) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities. With regard to the Vending Machines, Pepsi agrees to stock the Vending Machines with following frequency:

<i>No. of Cases Sold Per Machine per Year</i>	<i>Service Frequency</i>
< 50	Every 4 weeks
51 – 100	Every 2 weeks
101 – 200+	Every week

\*\*The service will always be a focus for Pepsi. These service frequencies are minimums, and Pepsi may service one or more machines multiple times per week, or in a more frequent manner than prescribed above.

(3) The Equipment may not be removed from the Facilities without Pepsi’s written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi. At the end of the Term, Pepsi shall have the right to, and shall upon request of the Customer, remove all Equipment from the Facilities at no expense to the Customer.

(4) Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. The Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay commissions as provided in this Agreement on documented revenue losses resulting from vandalism or theft of product with respect to any Vending Machines on the Facilities.

(5) Pepsi, at its sole discretion or upon mutual agreement between the parties, may agree to install magnetic strip card, online or chip card offline readers on Vending Machines placed at the Facilities. If agreed to by Pepsi, Vending Machines in mutually agreed upon locations will be fitted with magnetic stripe card on-line or chip card off-line readers in accordance with a mutually agreed to conversion schedule. Pepsi, or its agent, will be responsible for the collection of revenue from credit/debit card transactions and for the accounting of all such revenues.

(6) Pepsi reserves the absolute right to remove any glass front Vending Equipment that sells less than eight (8) cases of Product per week or any other Vending Equipment that sells less than two (2) cases of Product per week.



(7) Pepsi and Customer agree to follow the following process with regard to Vending Equipment refunds: Customer will designate a point person at the Facilities to collect and communicate any complaints from consumers regarding the Vending Equipment. Such designated person will obtain the full name and contact information for the consumer as well as the location and asset number of the Vending Equipment and the amount of Product refund that consumer is requesting. The Pepsi route driver will communicate with Customer's designee on its regular trips to the Facilities, will log all consumer requests/complaints into the Pepsi handheld device and will reimburse the designated person for any requested refunds.

B. Service to Equipment.

Other than routine cleaning and maintenance of areas where the Equipment is installed, which shall be the responsibility of and completed by Customer or its designee, Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

10. **REMEDIES FOR LOSS OF RIGHTS - TERMINATION.**

A. Customer's Termination Rights.

Without prejudice to any other remedy available to Customer at law or in equity in respect of any event described below, this Agreement may be terminated by Customer at any time effective thirty (30) days following written notice to Pepsi from Customer if:

(1) Pepsi fails to make any payment due hereunder, and such default shall continue for thirty (30) days after written notice of such default is received by Pepsi; or

(2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within forty-five (45) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such forty-five (45) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; *provided, however*, that such cure is completed to the reasonable satisfaction of Customer within ninety (90) days from the date of Pepsi's receipt of such written notice of default.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) any of the Products are not made available as required in this Agreement by the Customer, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited



during the Term of this Agreement; (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (*e.g.*, beverage tax or size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Customer; or (iv) Customer breaches any or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect. In connection with the foregoing, Pepsi shall give Customer notice of the event and where applicable (for events within Customer's control), shall provide Customer forty-five (45) days to cure such breach. If the identified breach/event is not remedied with the applicable notice period, then Pepsi may terminate this Agreement and recover from the Customer a reimbursement in accordance with Section D below. In addition to the termination rights set forth herein, in the event of any of the occurrences outlined in subsections (i) – (iii) above, Pepsi shall have the right, at its discretion and in lieu of termination, to mandate that the Customer meet and engage in good faith negotiations aimed at modifying the Agreement to reduce Pepsi's ongoing support of the Customer by an amount that is equitable in light of the diminution of right to Pepsi (*e.g.*, equivalent to the percentage volume decline on campus). If such negotiations fail, then Pepsi shall have the right to terminate the Agreement upon thirty (30) days' notice.

C. Additional Termination Rights Available to Pepsi and Customer.

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party, or any parent of such other party, shall: (i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (iii) admit in writing its inability to pay its debts as such debts become due.

D. Sponsorship Fees in the Event of Termination.

If Pepsi terminates this Agreement pursuant to Section 10 or Customer terminates this Agreement without cause, then Pepsi shall be entitled to from Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi all funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Annual Sponsorship Fee, the amount of such reimbursement shall be determined by multiplying Annual Sponsorship Fee by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is twelve (12).



11. TAXES.

Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

12. CONFIDENTIALITY.

A. Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulation of the Customer, the Customer and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective affiliates) and advisors (including legal, financial and accounting advisors) (collectively, "*Representatives*"), as needed.

B. "*Confidential Information*" shall include all non-public, confidential or proprietary information that Customer or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to Customer or its Representatives in connection with this Agreement. "*Confidential Information*" shall include, but not be limited to, the terms and conditions of this Agreement. It is expressly understood that the disclosure in or pursuant to this Agreement by Customer, Pepsi or their respective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of Customer or Pepsi.

C. These Confidentiality provisions and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement for a period of three (3) years following such date of expiration or termination of this Agreement.

13. REPRESENTATIONS, WARRANTIES AND COVENANTS.

A. Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.



C. To the extent that the any intercollegiate athletic team is relocated to a venue which is not within the Facilities as its home venue, Customer agrees that it shall ensure all rights of Pepsi hereunder shall be extended to such alternate venue as to the intercollegiate athletic team and any advertising and pouring rights contained herein.

**14. INDEMNIFICATION.**

A. Pepsi will indemnify and hold the Customer harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of Products purchased directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi, (excluding claims arising out of the Customer's negligence or willful misconduct).

B. To the extent permitted by applicable law, the Customer will indemnify and hold Pepsi, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the Customer (excluding claims arising out of Pepsi's negligence or willful misconduct).

C. The provisions of this Section shall survive the termination of this Agreement.

**15. INSURANCE.**

A. Each party hereto maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance with such insurance carriers and in such amounts of insurance coverage reasonably acceptable to the other party. Each party agrees to name the other and each of its affiliates, and their respective officers, directors, employees, agents, representatives and successors and assigns on a certificate of insurance, as additional insureds with respect to the certificate holder's negligence.

B. Either party shall have the right, during the Term from time to time, to request copies of such certificates of insurance and/or other evidence of the adequacy of the above insurance coverages.

**16. RIGHT OF OFFSET.**

Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer for Products ordered from and delivered by Pepsi pursuant to this Agreement.

**17. NOTICES.**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other



recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company  
1150 North Avenue  
Fresno, CA  
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company  
1111 Westchester Avenue  
White Plains, NY 10604  
Attn: Legal Department

If to Customer:

College of the Sequoias  
915 S. Mooney Blvd.  
Visalia, CA  
Attn: \_\_\_\_\_

**18. ASSIGNMENT.**

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto; *provided, however*, that, (x) such affiliate is capable of fully performing all obligations of the assignor hereunder and (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Customer represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder.

**19. GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles. Any legal proceeding of any nature whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, before the Courts of the State of New York, or the United States District Court having jurisdiction in Westchester County, New York, or, if neither of such courts shall have jurisdiction, then before any court sitting in Westchester County, New York having subject matter jurisdiction. The



parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the State of New York in any manner to be submitted to any such court pursuant hereto, and the parties hereto expressly waive all rights to trial by jury regarding any such matter.

**20. FORCE MAJEURE.**

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

**21. RELEASE, DISCHARGE OR WAIVER.**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

**22. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.**

This Agreement and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

**23. RELATIONSHIP OF THE PARTIES.**

The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties.

**24. EFFECT OF HEADINGS.**

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.





**25. CONSTRUCTION.**

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.

**26. SEVERABILITY.**

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

**27. AMENDMENTS.**

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

**28. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**29. FURTHER ASSURANCES.**

Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly entered into as of the date set forth below.

**BOTTLING GROUP, LLC**

**COLLEGE OF THE SEQUOIAS**

By: [Signature]  
Name: BRETT FRANTAS  
Title: KAM  
Date: 1/30/2017

By: [Signature]  
Name: Christine Statton  
Title: Vice President, Admin Services  
Date: 1.12.17

**Exhibit A**

**Current description & pricing for Postmix Products and Packaged Products**

*Customer acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement agree) that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.*

**Bottle & Can Effective August 1, 2016-July 31, 2017**

	<b>Product</b>	<b>Package</b>	<b>Current Price</b>	<b>Current Unit Price</b>	<b>New Price</b>	<b>New Unit Price</b>
CSD/NCB		12oz Can	\$12.00	\$0.50	\$12.48	\$0.52
CSD/NCB		12oz Can 6pk	\$11.40	\$0.48	\$11.86	\$0.49
CSD/NCB		Can 12oz 8P	\$11.40	\$1.43	\$11.86	\$1.48
1893 Cola		Can 12oz 12P	\$12.00	\$1.50	\$12.00	\$1.50
CSD		Can 16oz 12L	\$9.36	\$0.78	\$9.73	\$0.81
CSD/NCB		8oz Can	\$12.37	\$0.52	\$12.86	\$0.54
CSD		8.5oz Glass	\$21.00	\$0.88	\$21.84	\$0.91
CSD		16oz Bottle	\$26.99	\$1.12	\$28.07	\$1.17
CSD		20oz Bottle	\$22.15	\$0.92	\$23.04	\$0.96
CSD		12oz Bottle 8P	\$16.07	\$2.01	\$16.71	\$2.09
CSD		12oz Glass	\$20.23	\$0.84	\$21.04	\$0.88
Mt. Dew Kickstart Hydrating		12oz Can	\$12.00	\$1.00	\$12.48	\$1.04
Mt. Dew Kickstart		Can 16oz 12L	\$15.18	\$1.27	\$15.79	\$1.32
Mt. Dew Black Label		Can 16oz 12L	\$14.00	\$1.17	\$14.56	\$1.21
CSD		24oz Can	\$16.38	\$0.68	\$17.04	\$0.71
CSD		10oz Glass	\$16.13	\$0.67	\$16.78	\$0.70
CSD		1 Liter Bottle	\$19.61	\$1.31	\$20.39	\$1.36
Schweppes Sparkling		20oz Bottle	\$18.46	\$0.77	\$19.20	\$0.80
Aquafina		20oz Bottle	\$12.66	\$0.53	\$13.17	\$0.55
Aquafina		12oz Bottle	\$15.51	\$0.65	\$16.13	\$0.67

Aquafina	1 Liter Bottle	\$14.81	\$0.99	\$15.40	\$1.03
Aquafina	1 Liter Bottle	\$14.81	\$1.23	\$15.40	\$1.28
Aquafina Sparkling	Can 12oz 12L	\$9.00	\$0.75	\$9.00	\$0.75
Aquafina Splash	20oz Bottle 24L	\$14.65	\$0.61	\$15.24	\$0.64
PACT	16oz Bottle	\$14.90	\$1.24	\$15.50	\$1.29
O.N.E.	6.75oz Carton	\$19.19	\$2.40	\$19.96	\$2.50
O.N.E.	8.5oz Carton	\$15.20	\$1.27	\$15.81	\$1.32
O.N.E.	11.2oz Carton 24	\$42.12	\$1.76	\$43.80	\$1.83
O.N.E.	11.2oz Carton	\$21.06	\$1.76	\$21.90	\$1.83
O.N.E.	16.9oz Carton	\$22.22	\$1.85	\$23.11	\$1.93
Muscle Milk Total (Smoothies)	16oz 12L	\$33.00	\$2.75	\$33.00	\$2.75
Muscle Milk 100 SF	12oz 12L	\$35.28	\$2.94	\$36.69	\$3.06
Muscle Milk	14oz Bottle	\$35.28	\$2.94	\$36.69	\$3.06
Gatorade/G2	20oz Bottle	\$22.15	\$0.92	\$23.04	\$0.96
Gatorade/G2	24oz Bottle	\$32.54	\$1.36	\$33.84	\$1.41
Gatorade Propel Elec	750ml Bottle	\$14.00	\$1.17	\$14.56	\$1.21
Gatorade/G2	32oz 15L	\$20.70	\$1.73	\$21.53	\$1.79
Gatorade Fuel Bars	2.1oz 12L	\$18.60	\$1.55	\$19.34	\$1.29
Gatorade Recover Bars	2.8oz 12L	\$18.60	\$1.55	\$19.34	\$1.29
Gatorade/G2	16.9oz Bottle	\$25.13	\$2.09	\$26.14	\$2.18
Gatorade/G2	12oz Bottle	\$18.84	\$1.57	\$19.59	\$1.63
Gatorade Prime	1oz Package	\$20.60	\$1.29	\$21.42	\$1.34
Gatorade	4oz Pouch	\$27.26	\$1.36	\$28.35	\$1.42
Gatorade	32oz 12L	\$16.56	\$1.38	\$17.22	\$1.44
Gatorade	12oz 4P	\$18.84	\$1.57	\$19.59	\$1.63
Gatorade	12oz 6P	\$18.84	\$1.57	\$19.59	\$1.63

Gatorade	12oz 12P	\$18.84	\$1.57	\$19.59	\$1.63
Gatorade	20oz Bottle 24P	\$22.15	\$0.92	\$23.04	\$0.96
Gatorade	28oz Bottle	\$20.70	\$1.38	\$21.53	\$1.44
Gatorade Propel	20oz Bottle	\$16.64	\$0.69	\$17.31	\$0.72
Lipton Brisk	1 Liter Bottle 15L	\$14.51	\$0.97	\$15.09	\$1.01
Lipton	14oz 12L	\$18.00	\$1.50	\$18.00	\$1.50
Lipton	Can 12oz 12P	\$11.40	\$0.95	\$11.86	\$0.99
Lipton Brisk	Can 12oz 8P	\$11.40	\$1.43	\$11.86	\$1.48
Lipton Sparkling (12P)	12oz Can	\$9.50	\$0.79	\$9.88	\$0.82
Lipton Brisk (12P)	24oz Can	\$10.12	\$0.84	\$10.52	\$0.88
Lipton	20oz Bottle	\$22.15	\$0.92	\$23.04	\$0.96
Lipton Pureleaf	18.5oz Bottle	\$13.94	\$1.16	\$14.50	\$1.21
Lipton	18.5oz 6P	\$13.94	\$1.16	\$14.50	\$1.21
Lipton Iced Tea	1 Liter Bottle	\$19.61	\$1.31	\$20.39	\$1.36
Lipton Tazo	13.8oz Bottle 12L	\$19.02	\$1.59	\$19.78	\$1.65
Dole	10oz Bottle	\$21.53	\$0.90	\$22.39	\$0.93
Tampico (12P)	16oz Can	\$9.09	\$0.76	\$9.45	\$0.79
Tampico (24P)	16oz Can	\$18.17	\$0.76	\$18.90	\$0.79
Tampico	20oz Bottle	\$18.56	\$0.77	\$19.30	\$0.80
Tampico	12oz Bottle	\$9.11	\$0.76	\$9.47	\$0.79
Dole	10oz Bottle	\$21.53	\$0.90	\$22.39	\$0.93
Ocean Spray	15.2oz Bottle	\$14.56	\$1.21	\$15.14	\$1.26
SoBe Juice/Tea	20oz Bottle	\$17.46	\$1.46	\$18.16	\$1.51
SoBe Lifewater	20oz Bottle	\$17.46	\$1.46	\$18.16	\$1.51
SoBe Energy (24P)	16oz Can	\$56.44	\$2.35	\$58.70	\$2.45
Seattles Best Iced Coffee	Can 9.5oz 4P	\$25.31	\$2.11	\$26.32	\$2.19

Starbucks DS Protein	11oz Can	\$23.00	\$1.92	\$23.92	\$1.99
Starbucks Iced Coffee (12P)	11oz Bottle	\$18.90	\$1.58	\$19.66	\$1.64
Starbucks Refreshers	12oz Can	\$19.30	\$1.61	\$20.07	\$1.67
Starbucks Frappucino (12L)	9.5oz Glass	\$17.43	\$1.45	\$18.13	\$1.51
Starbucks Frappucino (15P)	9.5oz 15P	\$21.79	\$1.45	\$22.66	\$1.51
Starbucks Frappucino	9.5oz 4P	\$34.86	\$2.91	\$36.25	\$3.02
Starbucks Frappucino (12P)	13.7oz Glass	\$26.84	\$2.24	\$27.91	\$2.33
Starbucks Double Shot (12P)	6.5oz Can	\$29.13	\$2.43	\$30.30	\$2.53
Starbucks Double Shot (24P)	6.5oz Can	\$47.01	\$1.96	\$48.89	\$2.04
Muscle Milk	14oz Bottle	\$35.28	\$2.94	\$36.69	\$3.06
Rockstar	Can 16oz 4P	\$37.43	\$1.56	\$38.93	\$1.62
Rockstar (24P)	16oz Can	\$50.61	\$2.11	\$52.63	\$2.19
Rockstar (24P)	15.5oz Can	\$50.61	\$2.11	\$37.40	\$2.19
Rockstar (12P)	12oz Can	\$17.50	\$1.46	\$18.20	\$1.52
Rockstar (24P)	12oz Can	\$35.00	\$1.46	\$37.40	\$1.52
Rockstar (12P) Water	24oz Can	\$19.13	\$1.59	\$19.90	\$1.66
Amp Almond Milk	Can Almtk 16oz 12	\$25.31	\$2.11	\$26.32	\$2.19
AMP/No Fear (12P)	16oz Can	\$25.31	\$2.11	\$26.32	\$2.19

### Fountain & Supplies

Product	Package	Current Gallon Price	Current Box Price	New Gallon Price	New Box Price
SoBe	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49
CSD	5G BIB	\$9.45	\$47.25	\$9.83	\$49.15
CSD	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49
Gatorade	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49
Lipton	5G BIB	\$9.45	\$47.25	\$9.83	\$49.15
Lipton	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49

Lipton Iced Tea	3G BIB	\$17.54	\$52.62	\$18.24	\$54.72
Tropicana NCB	5G BIB	\$9.45	\$47.25	\$9.83	\$49.15
Tropicana (NCB)	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49
Gatorade	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49
Seasons Harvest	BIB 3G	\$9.45	\$28.35	\$9.83	\$29.49
SoBe Lifewater	3G BIB	\$9.45	\$28.35	\$9.83	\$29.49

A yearly price increase shall not exceed 4%.

Current price increases are applied annually August 1<sup>st</sup> justified by cost increases associated with raw materials or other costs.

Price increases will be presented to the college in no less than 30 days before implementation.



**Exhibit B**

**Facilities & Printing Advertising and Additional Rights to be Provided to Pepsi**

**A. Facilities and Print Advertising.**

- (1) Facilities Advertising.  
Such advertising as may be mutually agreed upon between the parties
- (2) Print Advertising.  
Such advertising as may be mutually agreed upon between the parties

**B. Additional Rights.**

- (1) Tickets and Hospitality.  
Tickets to College athletic events and other performances sponsored by Customer as mutually determined by the College and Pepsi.

**COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT**  
**Board of Trustees Meeting**  
August 8, 2016

**CALIFORNIA STATE UNIVERSITY FRESNO AND  
COLLEGE OF THE SEQUOIAS MEMORANDUM OF  
UNDERSTANDING**

**13**

**Status:                      Action**

Presented by:              Christine Statton  
   Vice President, Administrative Services

**Issue**

California State University, Fresno (Fresno State) offers upper division courses with a variety of educational programs leading to Bachelor's and Master's degrees through the use of on-site instruction and distance learning technology at the College of the Sequoias campus. The University also desires to expand their offerings to include Accelerated Bachelor degree offerings at the College of the Sequoias campus.

The College of the Sequoias (COS) offers lower division courses with a variety of educational programs leading to Associate of Arts degrees. Many of these degrees transfer directly into Bachelor degrees such as those offered by Fresno State.

Fresno State and COS desire to enhance the educational opportunities for the residents of Visalia, Tulare, Hanford, and surrounding communities. As such, COS plans to lease the Live Oak Building to Fresno State free of charge according to the proposed MOU, for the next five years, and in return, Fresno State will expand its offerings on the Visalia Campus, to all COS students. The array of programs offered will include non-credit professional development as well as credit-bearing course work and, when system and accrediting agency standards are met, degree programs. Fresno State will implement a two-year action plan that identifies non-credit professional certificates and other accelerated higher education degree programs through self-support (Continuing and Global Education).

The details of the facility lease, student services, library services and administrative services offered by COS, including utilities, maintenance, and technology support are spelled out in the MOU, as are the responsibilities of COS and Fresno State. The details of library services and student support services will be addressed in an addendum to this agreement, which will be submitted to the Board of Trustees this fall. COS and Fresno State desire to enter into this Memorandum of Understanding for a period of five years, commencing from the execution date through June 30, 2021, with the option of another five-year term upon the mutual agreement by both parties. This agreement may be modified, amended or cancelled at any time by the mutual written consent of all parties.



**Recommended Action**

It is recommended that the Board of Trustees approve the Memorandum of Understanding between California State University Fresno and College of the Sequoias for the use of Live Oak Building and other agreed upon services.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CALIFORNIA STATE UNIVERSITY, FRESNO  
AND  
COLLEGE OF THE SEQUOIAS**

**WHEREAS**, California State University, Fresno (hereinafter "Fresno State") offers upper division courses with a variety of certificate and educational programs at the College of the Sequoias campus, and;

**WHEREAS**, the College of the Sequoias (hereinafter "COS") offers lower division courses with a variety of educational programs leading to Associates of Arts degrees, and;

**WHEREAS**, Fresno State and COS desire to enhance the higher education opportunities for the residents of Visalia and surrounding communities.

**WHEREAS**, Fresno State and COS will work collaboratively and in partnership to provide enrollment, transition, and student success services and programs to meet student needs and support their graduation.

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual promises herein contained, the parties agree as follows:

**I. RESPONSIBILITIES OF COS**

- A. COS will provide Fresno State with the opportunity to occupy the Live Oak building which contains approximately 9,600 square feet of instructional and office spaces.
  - The building is under warranty by the general contractor for one-year expiring May 25, 2017. There is an extended warranty of the HVAC equipment and roof system; specific dates of warranty coverage may be obtained from the COS Facilities Department.
- B. COS agrees to provide use of entire building at no cost to Fresno State including electricity, natural gas, and water. COS will provide grounds and landscape service until June 30, 2019. COS will control HVAC and building lighting on an energy management system and will schedule usage as coordinated with the COS Facilities Department.
- C. COS will perform preventative maintenance and inspections as needed. COS will provide building maintenance and repairs for any items costing \$100.00 or more, excluding damages caused by occupants (Fresno State) and/or those caused by Fresno State usage. Fresno State will handle the maintenance and repair for all furniture, fixtures, and equipment.
- D. COS will provide telecommunications (low voltage) infrastructure and internal building wiring as required to provide voice, data, Wi-Fi and video services. COS will provide limited on-site technical assistance as needed.

- E. COS will advertise the availability of Fresno State offerings in COS publications to the extent possible.
- F. COS library services, parking permits, student ID cards, health services, and services for students with disabilities for Fresno State students will be outlined in an addendum to this agreement dated prior to October 31, 2016.

## **II. RESPONSIBILITIES OF FRESNO STATE**

- A. Fresno State will offer educational opportunities to students in the geographic region of Visalia. Fresno State will schedule classroom space exclusive to the program's best interest and anticipated student demand. The array of programs will include non-credit professional development as well as credit-bearing course work and, when system and accrediting agency standards are met, degree programs. Fresno State classes will operate days, nights, and weekends, and may be outside of traditional COS class hours. Revenue received from Fresno State programs remains Fresno State's exclusive income to be used according to Fresno State Policy and Policies of the California State University.
- B. Fresno State will implement a two-year action plan that identifies non-credit professional certificates and other accelerated higher education degree programs through self-support (Continuing and Global Education) in accordance with the proposed timeline.
- C. Fresno State will complete a Needs Assessment for Self-Support programs that would benefit COS students and the residents of Visalia and the surrounding communities.
- D. Fresno State will assign a staff person from the Division of Student Affairs and Enrollment Management who will be on-site weekly to coordinate student services and programs including transfer counseling services for any COS student who seeks to transfer to Fresno State.
- E. Fresno State will fund the furnishings and technology equipment required for instruction and for staff administrative needs.
- F. Fresno State will be responsible for executing a contract for custodial services, and will take responsibility for the maintenance of the landscaped areas commencing July 1, 2019.
- G. Fresno State will transfer ownership of existing portable classrooms ("as-is") owned by Fresno State to COS at no cost.

## **III. STUDENT HEALTH SERVICES**

- A. COS health services for Fresno State students will be outlined in an addendum to this agreement dated prior to October 31, 2016.

## **IV. SERVICES FOR STUDENTS WITH DISABILITIES**

- A. Services for Students with Disabilities (SSD) will provide assistance to help students receive the accommodations necessary to facilitate their learning. A variety of accommodations to meet different learning and classroom needs are available.

- B. Students with disabilities who wish to request accommodations must initiate the request personally with Fresno State SSD.
- C. Verification of the eligibility of Fresno State students with disabilities for accommodation and determination of appropriate is solely the responsibility of SSD.
- D. SSD will give the student a copy of the California State University Board of Trustees Policy on Disability Support and Accommodations - Executive Order Number 926.
- E. Communication with professors for accommodations for Fresno State students will be prepared by SSD.

**V. TECHNOLOGY SERVICES**

- A. Fresno State will purchase VOIP handsets.
- B. Fresno State and COS will coordinate phone system service for Fresno State.
- C. Fresno State will be responsible for installing and maintaining any wireless access points.
- D. COS will provide limited technical on-site support as needed.

**VI. MARKETING AND BRANDING OF FRESNO STATE PRESENCE AND PARTNERSHIP**

- A. The name of the site is Fresno State Visalia Campus.
- B. Fresno State will provide a logo for Fresno State Visalia Campus following the University's established brand guidelines.
- C. Fresno State will provide upon request to COS the Fresno State Visalia Campus logo for use in COS promotional materials.
- D. When the physical location is referenced, both parties will use "at College of the Sequoias."
- E. Fresno State will seek prior written design approval from COS for the furnishing and installation of any exterior or interior branding and way finding signage to ensure architectural and aesthetic compatibility with any COS architectural design standards

**VII. TERM, MODIFICATION AND CANCELLATION**

- A. This agreement constitutes the entire statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements oral and written, between the parties relating to the subject matter of this MOU.
- B. The initial term of this memorandum of understanding shall be five (5) years commencing from the execution date through June 30, 2021, with the option of another five-year term upon the mutual agreement by both parties.
- C. This agreement may be modified, amended or cancelled at any time by the mutual written consent of all parties.

**VIII. INDEMNIFICATION**

- A. California State University, Fresno agrees to defend, indemnify and hold harmless College of the Sequoias and its officers, agents and employee from any and all liability, claims, actions, and damages of whatever kind, arising out of any act of omission of California State University, Fresno, its officers, agents or employees arising out of or in any way connected to California State University, Fresno's performance under this agreement.
- B. College of the Sequoias agrees to defend, indemnify and hold harmless California State University, Fresno and its officers, agents and employee from any and all liability, claims, actions, and damages of whatever kind, arising out of any act or omission of College of the Sequoias, its officers, agents or employees arising out of or in any way connected to College of the Sequoias performance under this agreement.

**COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT**

\_\_\_\_\_  
Superintendent/President

\_\_\_\_\_  
Date

\_\_\_\_\_  
President, Board of Trustees

\_\_\_\_\_  
Date

**CALIFORNIA STATE UNIVERSITY, FRESNO**

\_\_\_\_\_  
President

Date

\_\_\_\_\_

\_\_\_\_\_  
Provost and Vice President for Academic Affairs

\_\_\_\_\_  
Date

**ADDENDUM TO  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
COLLEGE OF THE SEQUOIAS  
AND  
CALIFORNIA STATE UNIVERSITY, FRESNO**

Through this addendum to the MOU between College of the Sequoias (COS) and California State University, Fresno dated August 8, 2016, COS and Fresno State agree regarding how the parties shall coordinate and/or share the following services on their Visalia campus.

**Disabilities Services**

- Fresno State and College of the Sequoias will each specify a contact person within each of our offices to spearhead service delivery as needed by our students. They will work in collaboration to meet student accommodations/needs. Fresno State contact person will be the Director of Services for Students with Disabilities. COS will be represented by Sandra Calderon, Director of the Access and Ability Center.

**Financial Aid/Enrollment/Transfer/Career Services**

- Fresno State will provide one Recruitment Counselor to visit COS (one day a week) and serve as a conduit for new transfer enrollment, advising, and provide referrals for financial aid issues. College of the Sequoias has assigned Mainou Her and Amy Pimentel to serve in collaboration with Fresno State staff to meet student needs. Fresno State has assigned Director of Undergraduate Student Recruitment (or their designee) to work with the College of Sequoias.

**Student ID Cards**

- Fresno State students will be provided College of the Sequoias student ID cards at no cost by student activities office for access to computer labs, parking (fee), library and other campus areas.

**Student Health and Counseling Center**

- Fresno State and College of the Sequoias will provide services for these students at the Fresno State main campus as needed. Assistant Vice President for Student Affairs Administration will serve as the contact person.

**Career Development Service**

- The Career Development Center at Fresno State will work with College of the Sequoias career staff to assess student career services needs and a service delivery plan will be developed. Online one-on-one career counseling services will be made available to students. The Director of Career Development Center will serve as the Fresno State contact. Mainou Her will be the COS contact.

**Testing Services**

- Fresno State will work with College of Sequoias to determine the need for standardized testing based on the educational and career paths of students. A plan will be developed for administering tests in high demand areas. The Associate Vice President for Student Success Services will serve at the contact person.

**Educational Opportunity Program**

- Fresno State and College of the Sequoias will designate staff to work in partnership on seamless transfer of Educational Opportunity Program students from College of the Sequoias to Fresno State.
- Adrian Beltran will represent College of the Sequoias and Fresno State will be represented by the Director of the Educational Opportunity Program (EOP).

**Tutoring/Supplemental Instruction**

- As program expands into second year, Fresno State will collaborate with College of the Sequoias to offer online tutoring for selected courses where tutoring is not available on the College of Sequoias campus. Staff to be assigned at a later date as needs materialize.

**Learning Resource Center/Library**

- Fresno State students will have full access to the COS Library resources and services at all three COS sites and online. Amanda Dinscore will serve as the Fresno State contact. Mary-Catherine Oxford, Director LRC, will be the COS contact. FSU will provide COS at least one staff off-campus login to ensure FSU students are able to receive the same level of FSU reference and instructional services while at COS.

**Custodial Services, Custodial Supplies, and Garbage/Waste Services**

- College of the Sequoias will provide custodial services, custodial supplies, and garbage/waste disposal services to Fresno State for a cost of \$24,000 per year, to be invoiced on July 1 and February 1 of each year. Invoices will be sent to the office of the Vice President for Administration. The annual cost of salaries and benefits for the part-time custodian (currently \$20,000 per year) will increase annually equivalent to any negotiated salary increases for COS classified staff, and any applicable mandated employer PERS contribution rate increases. The annual invoices to Fresno State will increase accordingly.

**COLLEGE OF THE SEQUOIAS**

Stan A. Carrizosa 10-10-16  
Superintendent/President Date

Xosha Beltran 10/10/16  
President, Board of Trustees Date

**CALIFORNIA STATE UNIVERSITY, FRESNO**

James A. Cu 10/26/16  
President Date

Lynette Salgado 10/25/16  
Provost and Vice President for Academic Affairs Date

Isabella Salgado 10/25/2016  
Vice President for Administration Date

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CALIFORNIA STATE UNIVERSITY, FRESNO  
AND  
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- A. Fresno State will offer educational opportunities to students in the geographic region of Visalia. Fresno State will schedule classroom space exclusive to the program's best interest and anticipated student demand. The array of programs will include non-credit professional development as well as credit-bearing course work and, when system and accrediting agency standards are met, degree programs. Fresno State classes will operate days, nights, and weekends, and may be outside of traditional COS class hours. Revenue received from Fresno State programs remains Fresno State's exclusive income to be used according to Fresno State Policy and Policies of the California State University.
- B. Fresno State will implement a two-year action plan that identifies non-credit professional certificates and other accelerated higher education degree programs through self-support (Continuing and Global Education) in accordance with the proposed timeline.
- C. Fresno State will complete a Needs Assessment for Self-Support programs that would benefit COS students and the residents of Visalia and the surrounding communities.
- D. Fresno State will assign a staff person from the Division of Student Affairs and Enrollment Management who will be on-site weekly to coordinate student services and programs including transfer counseling services for any COS student who seeks to transfer to Fresno State.
- E. Fresno State will fund the furnishings and technology equipment required for instruction and for staff administrative needs.
- F. Fresno State will be responsible for executing a contract for custodial services, and will take responsibility for the maintenance of the landscaped areas commencing July 1, 2019.
- G. Fresno State will transfer ownership of existing portable classrooms ("as-is") owned by Fresno State to COS at no cost.

## **III. STUDENT HEALTH SERVICES**

- A. COS health services for Fresno State students will be outlined in an addendum to this agreement dated prior to October 31, 2016.

## **IV. SERVICES FOR STUDENTS WITH DISABILITIES**

- A. Services for Students with Disabilities (SSD) will provide assistance to help students receive the accommodations necessary to facilitate their learning. A variety of accommodations to meet different learning and classroom needs are available.

- B. Students with disabilities who wish to request accommodations must initiate the request personally with Fresno State SSD.
- C. Verification of the eligibility of Fresno State students with disabilities for accommodation and determination of appropriate is solely the responsibility of SSD.
- D. SSD will give the student a copy of the California State University Board of Trustees Policy on Disability Support and Accommodations - Executive Order Number 926.
- E. Communication with professors for accommodations for Fresno State students will be prepared by SSD.

#### **V. TECHNOLOGY SERVICES**

- A. Fresno State will purchase VOIP handsets.
- B. Fresno State and COS will coordinate phone system service for Fresno State.
- C. Fresno State will be responsible for installing and maintaining any wireless access points.
- D. COS will provide limited technical on-site support as needed.

#### **VI. MARKETING AND BRANDING OF FRESNO STATE PRESENCE AND PARTNERSHIP**

- A. The name of the site is Fresno State Visalia Campus.
- B. Fresno State will provide a logo for Fresno State Visalia Campus following the University's established brand guidelines.
- C. Fresno State will provide upon request to COS the Fresno State Visalia Campus logo for use in COS promotional materials.
- D. When the physical location is referenced, both parties will use "at College of the Sequoias."
- E. Fresno State will seek prior written design approval from COS for the furnishing and installation of any exterior or interior branding and way finding signage to ensure architectural and aesthetic compatibility with any COS architectural design standards

#### **VII. TERM, MODIFICATION AND CANCELLATION**

- A. This agreement constitutes the entire statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements oral and written, between the parties relating to the subject matter of this MOU.
- B. The initial term of this memorandum of understanding shall be five (5) years commencing from the execution date through June 30, 2021, with the option of another five-year term upon the mutual agreement by both parties.
- C. This agreement may be modified, amended or cancelled at any time by the mutual written consent of all parties.

#### **VIII. INDEMNIFICATION**

