



REQUEST FOR PROPOSAL

Frank Phillips College

for

Selection of a Contractor to Provide
Operation and Management of Campus Food Services

RFP No. 2025-26-001

Prepared By:

Jackie Brand

Vice President of Administrative Services / CFO

Frank Phillips College

1301 W Roosevelt St.

Borger, TX 79007

806-457-4215

jbrand@fctx.edu

KEY DATES SCHEDULE

PROJECT NAME:	Campus Food Services
SCOPE OF WORK:	Operation and Management of Campus Food Services for either a five (5) year contract or ten (10) year contract
ISSUANCE OF RFP:	February 2, 2026
MANDATORY PRE-PROPOSAL CONFERENCE:	February 17, 2026 at 2:30 pm Location: 1301 W Roosevelt St., Borger, Texas 79007 in the Fine Arts Building. Attendees must register at the pre-proposal meeting and will receive guided tours of the facilities. The pre-proposal conference will allow all Proposers an opportunity to ask relevant questions and clarify provisions of this RFP. Frank Phillips College WILL ACCEPT PROPOSALS ONLY FROM THOSE RECORDED AS ATTENDING THIS MEETING – NO EXCEPTIONS.
DEADLINE FOR QUESTIONS:	February 26, 2026, by 10:00 a.m. CST
SUBMITTAL DEADLINE:	Monday, March 2, 2026, by 4:00 p.m. CST
DELIVERY LOCATION:	Frank Phillips College Attn: Jackie Brand VP of Admin Services/CFO 1301 W. Roosevelt Borger, Texas 79007
BOARD OF REGENTS AWARD:	A final determination will be made at a future board meeting. Frank Phillips College reserves the right to reject any and all Request for Proposals and waive any and all formalities and conditions.
TERM OF SERVICE/PROJECT:	Either a five (5) year contract from June 1, 2026 through May 31, 2031; or a ten (10) year contract from June 1, 2026 through May 31, 2036.

NOTICE: ALL QUESTIONS RELATED TO THIS RFP ARE TO BE DIRECTED TO JACKIE BRAND VIA EMAIL TO jbrand@fpctx.edu. NO PHONE CALLS WILL BE ACCEPTED.

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of Frank Phillips College

Frank Phillips College (FPC) is a public community college located in Borger, Texas, serving the northernmost region of the Texas Panhandle. Established in 1948, the College provides educational services to students across nine counties in a predominantly rural service area.

FPC operates its main campus in Borger and offers a range of academic and workforce programs designed to meet the needs of both traditional and nontraditional students. The College maintains a close-knit campus environment and supports daily on-campus activities that include instructional programs, student services, and community engagement.

Frank Phillips College provides a friendly, **tobacco-free vapor-free environment** at all campus locations. The possession or consumption of alcohol is not permitted on campus grounds.

Frank Phillips College is committed to providing a safe environment for students, faculty, staff, and visitors. Campus Security can be contacted at 806-886-5047. In the event of an emergency, individuals should dial 911.

Additional information about Frank Phillips College may be found on the College's website at www.fpctx.edu.

1.2 Objective of this Request for Proposal

Frank Phillips College ("FPC") is soliciting proposals in response to this Request for Proposal, RFP No. **2025-26-001** (this "RFP"), from qualified vendors to provide Operation and Management of Campus Food Services (the "**Services**"). The Services are more specifically described in **Section 5.4**.

FPC provides food services on its Main Campus in Borger, Texas in the dining hall located in the Fine Arts Building. Selected vendors will also be asked to provide catering for on-campus and off-campus events, meetings, etc. when requested.

The Contractor shall provide the labor, equipment, and supplies necessary to perform the Operation and Management of the Campus Food Services.

The Contractor must use its own employees; subcontracting of labor is specifically prohibited.

FPC reserves the right to award either a five (5) year contract or a ten (10) year contract based on the submitted proposals.

All information contained in this RFP is believed to be substantially correct. However, the responsibility for determining the full extent of the services required, and verification of all information herein shall rest solely with those making proposals. Neither FPC nor its representatives shall be responsible for any error or omission in this RFP.

1.3 Public Information

Proposer is hereby notified that FPC strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information.

FPC may seek to protect from disclosure all information submitted in response to this RFP until a final agreement is executed.

Upon execution of a final agreement, FPC will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a nonconfidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (*Government Code*, Chapter 552.001, et seq.). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

1.4 Contract and Service Agreement

The contractor, if any, will be required to enter into a contract with FPC in a form substantially similar to the Proposed Agreement attached to this RFP as **Appendix Two**.

Proposers should be aware that the contents of the successful proposal will become a part of the subsequent contractual documents. Failure of the Proposer to accept this obligation may result in the cancellation of any award.

By submitting a proposal, Proposer further warrants and represents that he/she has become fully acquainted with the conditions, facts, and circumstances relating to providing the services/products required under this RFP. The failure or omission of Proposer to acquaint himself/herself with existing conditions, facts, and circumstances, shall in no way relieve him/her of any obligation with respect to his/her proposal and any ensuing contract.

The services/coverages/products requested are currently anticipated to commence on June 1, 2026.

Each Proposer acknowledges that FPC has made a reasonable attempt to provide the Proposer with relevant pricing and exposure data. The Proposer, therefore, waives any right of avoidance of the contract based upon any expressed or implied warranty or representation that the pricing or activity data provided discloses all requirements, risks, or exposures known to exist in the provision of the services being requested.

1.5 Clarifications and Interpretations

FPC may, in its sole discretion, respond in writing to written inquiries concerning this RFP. Only FPC's responses that are made by formal written Addenda will be binding on FPC. Any verbal responses, written interpretations, or clarifications other than the Addenda to this RFP will be without legal effect. All Addenda issued by FPC prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing, and returning the Addenda Checklist (ref. **Section 4** of **Appendix One**). The Addenda Checklist must accompany the Proposer's proposal. It is the Proposer's responsibility to make sure they have obtained all addenda. Addenda, if any, will be posted on FPC's website at www.fpctx.edu/procurement-services.

Any interested party that receives this RFP by means other than directly from FPC is responsible for notifying FPC that it has received an RFP package, and should provide its name, address, telephone number and email address to FPC, so that if FPC issues Addenda to this RFP or provides written answers to questions, that information can be provided to such party.

1.6 Proposal Evaluation Process

The evaluation of the Proposals shall be based on the requirements and percentages described in **Section 2.3** of this RFP. All properly submitted Proposals will be reviewed, evaluated, and ranked by FPC.

FPC will select the Contractor by using the competitive sealed proposal process described in this Section. All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals required by this RFP will be opened publicly to identify the name of each Proposer submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals by this RFP will be rejected by FPC as nonresponsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, FPC may invite one or more selected Proposers to participate in oral presentations. FPC will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to the selection of the Contractor.

FPC may make the selection of Contractor based on the proposals initially submitted, without discussion, clarification, or modification. In the alternative, FPC may make the selection of Contractor based on negotiation with any of the Proposers. In conducting such negotiations, FPC will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

At FPC's sole option and discretion, FPC may discuss and negotiate all elements of the proposals submitted by selected Proposers within a specified competitive range. For purposes of negotiation, FPC may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, FPC will defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, FPC reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of FPC.

After submission of a proposal but before final selection of Contractor is made, FPC may permit a Proposer to revise its proposal in order to obtain the Proposer's **best and final offer**. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. FPC will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. FPC is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to FPC overall, as determined by FPC.

FPC reserves the right to negotiate any commissions and/or fees with the representative of the winning proposal.

FPC reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process if deemed to be in the best interests of FPC. The proposer is hereby notified that FPC will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by FPC.

1.7 FPC's Reservation of Rights/Unbalanced Proposal

FPC may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. FPC reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Qualifications, or to reject any and all Proposals and temporarily or permanently abandon the Project. FPC makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP. Acceptance of a Proposal for consideration does not waive this reservation of rights, nor does it imply any obligation by FPC.

If the best proposer's Proposal is significantly unbalanced either in excess of or below reasonable cost analysis values normally associated with the work, the Proposal will be considered as non-responsive and will not be considered for award. FPC reserves the right to evaluate and determine the next qualified Proposal for consideration of the Award.

1.8 Proposer's Acceptance of Evaluation Methodology

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.6** of this Section), [b] the Criteria for Selection (ref. **Section 2.3** of this RFP), and [c] the Proposed Agreement (ref. **Appendix Two**), and [d] all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition that some subjective judgments must be made by FPC during this RFP process.

1.9 No Reimbursement for Costs

Proposer acknowledges and accepts that any costs incurred from the Proposer's participation in this RFP shall be at the sole risk and responsibility of the Proposer. Proposer understands and agrees that (1) this RFP is a solicitation for proposals and FPC has made no representation written or oral that one or more agreements with FPC will be awarded under this RFP; (2) FPC issues this RFP predicated on FPC's anticipated requirements for the Services, and FPC has made no representation, written or oral, that any particular scope of services will actually be required by FPC; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.10 Eligible Respondents

Only individual firms or lawfully formed business organizations may apply. (This does not preclude a respondent from using consultants.) FPC will contract only with the individual firm or formal organization that submits a Proposal in accordance with the requirements set forth herein.

1.11 Sales and Use Taxes

Section 151.311, Tax Code, as amended effective October 1, 1993, permits the purchase free of state sales and use taxes of tangible personal property to be incorporated into realty in the performance of a contract for an improvement to realty for certain exempt entities that include junior college districts. The section further permits the purchase tax-free of tangible personal property (other than machinery or equipment and its accessories and repair and replacement parts) for use in the performance of such a contract if the property is "necessary and essential for the performance of the contract" and "completely consumed at the job site." In addition, the section permits the purchase tax-free of a tangible service for use in the performance of such a contract if the service is performed at the job site and if "the contract expressly requires the specific service to be provided or purchased by the person performing the contract" or "the service is integral to the performance of the contract."

1.12 Certification of Franchise Tax Status

Respondents are advised that the successful respondent will be required to submit certification of franchise tax status as required by State Law (H.B. 175, Acts 70th Leg. R.S., 1987, Ch. 283, p. 3242). The Respondent further agrees that each subcontractor and supplier under contract will also provide a certification of franchise tax status.

1.13 Proposal Validity Period

Each proposal must state that it will remain valid for FPC's acceptance for a minimum of one hundred twenty (120) days after the Submittal Deadline to allow time for evaluation, selection, and any unforeseen delays.

1.14 Equal Opportunity Employer

FPC is an equal opportunity employer and does not discriminate in awarding contracts or employment of persons because of their race, sex, age, religion, national origin, veteran, disabled or handicapped status, or any other characteristic protected by law. FPC requires companies with which it conducts business to be equal-opportunity employers and comply with all applicable federal, state, and municipal laws and regulations regarding contracting and employment practices.

1.15 House Bill 1295

The Texas Legislature adopted House Bill 1295, which was added to Section 2252.908 of the Government Code. The law states that a governmental entity agency or state agency may not enter into certain contracts with a business entity unless the business submits a disclosure of interested parties (Form 1295). This disclosure requirement applies to a contract entered into on or after January 1, 2016. If awarded a contract, the vendor may be required to complete and submit this form. FPC will be unable to execute and services cannot be performed until the process is complete. https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

1.16 Bid Protest Procedure

A vendor who has timely responded to an Invitation to Bid, Request for Proposal, or Competitive Sealed Proposal, but is not awarded the bid, has the right to protest the bid award if the amount of the bid is over \$50,000 in the aggregate. A protest must be made in writing and submitted to the Business Office no later than five (5) business days after the award of the bid. The date of the bid award will not be counted as one of the five (5) business days. Any protest submitted after five (5) business days is untimely and will not be considered by FPC.

The written protest must contain the following in order to be considered:

- (a) A specific identification of the statutory, regulatory, or policy provision(s) that the action complained of is alleged to have violated.
- (b) A specific description of each act alleged to have violated the statutory, regulatory, or policy provision(s) identified in "a" of this subsection.
- (c) A precise statement of the relevant facts.
- (d) An identification of the issue or issues to be resolved.
- (e) Arguments and authorities in support of the protest; and
- (f) An affidavit that the contents of the protest are true and accurate.

No amendments to the protest will be considered by FPC.

The Business Office, legal counsel for FPC, and/or a committee headed by and appointed by the Vice President of Administrative Services / CFO, shall review the protest documentation and shall provide the protestor a final written determination regarding whether any statutes, regulations, or policies have been violated, the reasons for the determination, and remedial action to be taken, if any. This review and final determination may be made with the assistance of legal counsel. The written determination shall be made within ten (10) business days of receipt of the protest, unless the VP of Administrative Services / CFO, or the designee, notifies the protestor that additional time is needed. The decision shall be final.

1.17 Domestic Preferences for Procurement and Buy American Provisions

As appropriate and to the extent consistent with law, FPC has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending Federal funds. The Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (Purchases that are made with non-Federal funds or grants are excluded from the Buy American Act). The Vendor certifies that it is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

FPC will accept proposals submitted in response to this RFP until 4:00 p.m., Central Standard Time on Monday, **March 2, 2026** (the “**Submittal Deadline**”).

2.2 FPC Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following FPC contact (“**FPC Contact**”):

Frank Phillips College
Jackie Brand
VP of Administrative Services / CFO
1301 W Roosevelt St.
Borger, Texas 79007
806-457-4215
jbrand@fpctx.edu

FPC specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to FPC Contact. FPC Contact must receive all questions or concerns no later than **February 26, 2026 at 10:00 A.M.** FPC will have a reasonable amount of time to respond to questions or concerns. It is FPC's intent to respond to all appropriate questions and concerns; however, FPC reserves the right to decline to respond to any question or concern. It is the Proposer's responsibility to make sure they have obtained all addenda. Addenda, if any, will be posted on FPC's website at www.fpctx.edu/procurement-services.

2.3 Criteria for Selection

The successful Proposer, if any, selected by FPC in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to FPC. The successful Proposer is referred to as the "**Contractor.**"

Proposer is encouraged to propose terms and conditions offering the maximum benefit to FPC in terms of **(1) total overall cost/commission revenue to FPC, (2) renovations and capital investment, if any, (3) food service management expertise, and (4) quality and options of meal programs offered.** Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to FPC in a contract for the Services.

An evaluation team from FPC will evaluate proposals. The evaluation of proposals and the selection of the Contractor will be based on the information provided by Proposer in its proposal. FPC may give consideration to additional information if FPC deems such information relevant.

2.3.1 The criteria to be considered by FPC in evaluating proposals and selecting Contractor, will be those factors listed below.

Scoring Criteria:

2.3.1.1 Overall cost/revenue to FPC (ref. Section 6 of this RFP)	
• Part 1: Board rates/percentages for gross sales	(30%)
• Part 2: Renovations and capital investment	(30%)
• Part 3: Future capital investment options for FPC to be considered	(5%)
2.3.1.2 Quality and options of meal program(s) offered	(20%)
• Satisfactory response to specifications, general questions, and required content	
• Quality of meal plan(s) offered (food quality selection and program plan)	
• Options for different franchise tiers based on the cost to the client	
2.3.1.3 Professional reputation and references	(5%)
2.3.1.4 Food service experience in a comparable operation	(5%)
2.3.1.5 Added value	(5%)

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit one (1) complete copy of its entire proposal with original signatures by an authorized officer of Proposer on all documents, plus one (1) electronic copy (USB) containing a copy of the entire proposal.

3.2 Submission

Proposals must be received by FPC on or before the Submittal Deadline (ref. **Section 2.1** of this RFP) and should be delivered to or, if sent by common carrier (FedEx, UPS, etc.), mailed to:

Frank Phillips College
Attn: Jackie Brand
VP of Administrative Services / CFO
1301 W Roosevelt St.
Borger, Texas 79007
806-457-4215

3.3 Terms and Conditions

3.3.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Agreement (ref. **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications, Requirements, and Scope of Work (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

3.3.1.1. Specifications, Requirements, and Scope of Work (ref. **Section 5** of this RFP);

3.3.1.2. Agreement (ref. **APPENDIX TWO**);

3.3.1.3. Proposal Requirements (ref. **APPENDIX ONE**);

3.3.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

3.4 Submittal Checklist

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then FPC may reject the proposal:

- 3.4.1 Signed and Completed Execution of Offer (ref. **Section 2 of Appendix One**)
- 3.4.2 Signed and Completed Pricing Proposal (ref. **Section 6** of this RFP)
- 3.4.3 Responses to Proposer's General Questionnaire (ref. **Section 3 of Appendix One**)
- 3.4.4 Signed and Completed Addenda Checklist (ref. **Section 4 of Appendix One**)
It is the Proposer's responsibility to make sure they have obtained all addenda. Addenda, if any, will be posted on FPC's website at www.fpctx.edu/procurement-services.
- 3.4.5 Responses to questions and requests for information in the Proposer's General Questionnaire (ref. **Section 3 of Appendix One**)
- 3.4.6 Signed and Completed Felony Conviction Notification Form (ref. **Section 5 of Appendix One**)
- 3.4.7 Signed and Completed Delinquent Franchise Taxes Form (ref. **Section 6 of Appendix One**)
- 3.4.8 Signed and Completed Prohibition on Contracts with Companies Boycotting Israel Form (ref. **Section 7 of Appendix One**)
- 3.4.9 Signed and Completed Prohibition on Contracts with Companies Boycotting Energy Companies Form (ref. **Section 8 of Appendix One**)
- 3.4.10 Signed and Completed Prohibition on Contracts with Companies that Discriminate Against Firearms Entity or Trade Association Form (ref. **Section 9 of Appendix One**)

SECTION 4

PROPOSED AGREEMENT

The terms and conditions contained in the attached Proposed Agreement (ref. **Appendix Two**) or, in the sole discretion of FPC, terms and conditions substantially similar to those contained in the Proposed Agreement, will constitute and govern any contract or agreement that results from this RFP.

SECTION 5

SPECIFICATIONS AND SCOPE OF WORK

5.1 General Information

NOTE: Due to the nature and timing of this RFP and the fact that FPC will have set and advertised the current meal plan options and Board rates, it is possible any new offerings and/or pricing will not be implemented until the Spring 2027 semester.

The minimum requirements, specifications, and Scope of Work for the services are set forth below. The successful Proposer is referred to as the “**Contractor.**”

The objective is to provide quality food management and services, along with creative and innovative food choices to faculty, staff, and students to help promote student life and enhance the overall college experience.

FPC has approximately 1,800 students, (full-time, part-time, distance education, high school dual credit, and non-credit continuing education classes), 30 faculty, and 80 staff who have access to FPC’s food service venues, in addition to community members. FPC partners with 18 area high schools to provide dual credit courses. FPC offers 5 Associate’s degrees and 17 certificate programs. FPC is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC).

FPC Main Campus is a residential campus with a capacity for a total of 250 students in 3 residence halls, many of whom participate in NJCAA athletic sports. Men compete in basketball, baseball, and rodeo. Women compete in basketball, softball, rodeo, and volleyball. The students living on campus have a required meal plan.

The dining hall is currently housed in the Fine Arts building and operates daily, except for holidays. Operation during summer sessions is varied. The Fine Arts building includes the dining hall, a large event space auditorium, classrooms and meeting spaces. Fresh Ideas is the current contractor and has provided services for several years.

The purpose of this RFP is to obtain complete data from potential vendors to include how they propose to operate and manage FPC’s food service. The responses will enable Frank Phillips College to determine which vendor is best able to serve all of the criteria which are to be considered in the award of this contract. Proposers may propose additional tasks, options, or activities if they will substantially improve the results of this project.

5.2 Minimum Qualifications of Prosper

Each Proposal must include information that clearly indicates that Proposer meets each of the following minimum qualification requirements:

- 5.2.1 Be a food service and management firm engaged in the business for a minimum of five (5) years, and must show evidence of previous food service experience in a similar college setting.
- 5.2.2 Must not have previously defaulted on a food service operation contract. List any previous defaulted operations, if any.

5.3 Pricing Proposal – Ref. Section 6

5.4 Scope of Work – Requirements

The awarded Contractor shall operate and manage FPC's food service facility, provide meal plans, direct sales, and catering services as an independent contractor. The use or sale of alcohol products, however, is strictly prohibited.

The Dining Hall is currently open for business weekdays for breakfast, lunch, and dinner, and open for brunch and dinner on weekends for both Fall and Spring semesters, and for an appropriate number of days before and after those semesters for early or late arrivals. Cafeteria meals have unlimited seconds. The cafeteria is open on an agreed-upon basis during the summer. Other proposed operating hours/days and meal options, of course, will be considered.

Proposer shall include mandatory meal plan options for residence life students, along with for-purchase meal options for faculty/staff and commuter students.

Proposer will provide catering services on a non-exclusive basis.

5.4.1 Responsibilities of the College

FPC will provide all necessary food service equipment and facilities as-is. The facilities will include a kitchen, serving area, dining areas, office space, and toilet facilities for employees. The equipment will include all **current** kitchen equipment, cooking equipment, all serving equipment, dining room tables and chairs, and other such furnishings. These are provided as-is unless this inventory is included in a renovation/refresh/new equipment in the Contractor's proposal. The Contractor shall be responsible for its own office furnishings.

FPC will provide the **current** initial inventory of plates, flatware, glasses, serving trays, and salt and pepper shakers. However, the Proposer will be responsible for maintaining this level of inventory, adding to, if necessary, and shall replace any items needed to maintain a good working inventory.

FPC will provide necessary repair and/or building maintenance for plumbing, heating, air conditioning, and electrical service, and be responsible for periodic cleaning of exhaust vent ducts.

FPC will provide utility service for the service venues including water, sewer, natural gas, electricity, telephone service (VOIP), and internet service. However, the Contractor will provide its fax machine, if applicable. FPC does not guarantee any uninterrupted supply of utility services and FPC will not be liable to the vendor or to anyone else for any loss, damage, cost, or expense which may result from the interruption of or failure of utility services.

FPC will provide trash dumpsters and pest control services. It is the Contractor's responsibility to place garbage into the dumpsters.

FPC will provide all necessary fire extinguishers.

FPC shall furnish at its expense maintenance and repair as required on kitchen equipment after the yearly \$5,000 required by the Contractor.

FPC will have the right to inspect all facilities of the dining hall and its operation. Those inspections will include the quality and quantity of food, the method of service, the cleanliness and sanitation of the entire operation, including dining areas, opening, and closing hours, and the cleanliness, appearance, and behavior of the Contractor's employees. FPC will provide the Contractor with the results of any audits and allow the Contractor sufficient time to make corrections. Repeated problems or the failure of the Contractor to make timely corrections can be grounds to terminate the contract between FPC and Contractor.

FPC shall provide the Contractor with a list of students who are eligible to participate in the mandatory residential meal plan and make timely payment of each invoice for meal plans that it determines to be true and correct. Payments from FPC to the Contractor will be based on the number of such participants.

FPC will retain the privilege of using the dining area at any time that will not interfere with the food service operation. The contractor's resident manager and FPC shall establish mutually agreed-upon times and hours that the facilities will be available for FPC's use. At the completion of such time these facilities are used by FPC or others, FPC agrees and will be responsible at FPC's expense for any required janitor and maintenance service to restore facilities to their proper condition.

5.4.2 Responsibilities of Contractor

Contractor will purchase, at its expense, prepare and serve food, food products, and beverages for sale and distribution at FPC's food venues.

Contractor shall not sell, assign, transfer, or convey any agreement in whole or in part without the prior written consent of FPC.

Contractor shall be flexible in meeting future needs regarding the operation of the food service facilities to ensure the needs of faculty, staff, and students are met.

Contractor shall have the exclusive right to occupy and operate the food service facilities of FPC, including use of the kitchen, dining room, service and storage rooms, as well as auxiliary furnishings, dishes, silverware, linens, and other dining room and kitchen equipment owned by FPC.

Contractor will provide sack lunches or establish special serving hours for athletic teams who are required to be off campus for college programs during regular serving hours.

Contractor will provide its services in such a manner as to meet or exceed all requirements of the local Health Department or any other regulatory body and shall submit to FPC, upon request, satisfactory evidence of such compliance.

Contractor shall be responsible for the cleanliness of the entire kitchen, food prep and serving areas, concessions, when applicable, and dining areas, including providing necessary cleaning supplies. This responsibility is for all venues. Daily spot cleaning during service hours will be required and a daily thorough cleaning after hours.

The Contractor will be responsible for transporting daily all waste from its assigned areas to the appropriate provided dumpsters/receptacles. If FPC has a recycling program, the Contractor will adhere to those guidelines.

When the Contractor furnishes catered food for an event, the Contractor will be responsible for disposing of the trash and any associated clean-up.

Contractor shall bear the cost of re-keying all exterior doors and resetting the safe combination, if any. However, the Contractor shall not make lock changes without prior approval of FPC. FPC Campus Security and Facilities & Maintenance Department must be provided copies of all keys.

Contractor is responsible for maintaining in a clean, safe, uncluttered manner the back dock area that the Contractor may be using.

Contractor will be responsible for the first \$5,000 in repair/maintenance costs on FPC-owned food service equipment each contract year (June 1 – May 31). The Contractor will be responsible for all associated costs and/or damages incurred due to negligence or alteration of facilities/equipment without prior FPC approval.

Contractor shall follow FPC's guidelines, as well as any applicable laws, regarding the disposal of documents containing "Personally Identifiable Information" where there is a potential for identity theft. This includes but is not limited to, names, addresses, telephone numbers, social security numbers, student identification numbers, credit and/or debit card numbers, bank account numbers, email addresses, passwords, and/or PIN numbers.

Contractor shall comply with any logo licensing agreement as entered into by FPC and honor any current and future exclusive rights contracts that FPC is bound to.

FPC shall prohibit the sale of food on campus other than by the Contractor unless departments have secured authorization from authorized FPC personnel or as permitted by the Contractor. The Contractor will permit student and/or school-affiliated clubs and organizations to sell food and beverages for fundraising purposes so long as all such fundraisers are approved by FPC.

Contractor shall, at its expense, keep all cafeteria furniture in proper repair and operating condition.

Contractor must periodically, but not less than annually, hold meetings or forums, arranged by Student Life, to provide students with a reasonable opportunity to discuss the performance of the Contractor in providing food services.

Contractor may advertise and promote its products and services to the fullest extent to attract students, staff, faculty, and guests. All advertising and promotional efforts shall be devoted to the campus community. FPC representation of the endorsement shall not be permitted unless specific written approval has been given by the FPC Contact Person.

Point-of-sale software must be able to interface with FPC's existing systems, if needed.

Key control is essential. The Contractor will be responsible for each key assigned to perform necessary work. The Contractor must have a written key control plan and must provide a key control system at their own expense. At FPC's discretion, a quarterly key audit may be performed and the Contractor will be responsible for keys missing or for unauthorized duplications.

Contractor shall provide a schedule of hours of service sufficient to meet the needs of FPC students, faculty, and staff. Such hours will be approved by the FPC Contact Person.

5.4.3 Role of Contractor, Minimum Food Grades and Product Line

Contractor must use foods that meet or exceed the following grades:

- Meat: USDA "Good"
- Frozen foods: US Grade "A"
- Eggs: Grade "A"
- Staple items: USDA Grade "A"

Grades for foods that are not listed above should be equivalent to or higher than the grades shown.

All products sold or kept for sale shall conform in all respects to Federal, state, and municipal food and other applicable laws, ordinances, and regulations. No imitation, adulteration or misbranded articles shall be sold or kept for sale. All merchandise kept on hand shall be stored and handled with due regard to sanitation. Leftover perishable merchandise shall not be sold at any time.

Contractor is prohibited from selling/offering any items reasonably objected to by FPC but is not limited to the following: (a) alcoholic beverages, and (b) tobacco products. FPC reserves the right to require the Contractor to cease selling any item(s) that it deems inappropriate and/or unlawful.

5.4.4 Role of Contractor, Staffing

Contractor will provide an adequate staff of employees, including adequate administration and supervision at all times. The Contractor will consult with FPC prior to hiring anyone with a criminal

history. All staff will be required to have a background check before he/she can start work and rechecked annually to ensure the safety of FPC facilities.

Contractor must designate a Food Service Manager who must come to the position trained and experienced in the management and operation of a facility that is similar to that of FPC. The Contractor must agree that the tenure of the Food Service Manager is dependent on the continual approval of FPC.

Each employee of Contractor will strictly adhere to all campus rules and regulations. FPC reserves the right to remove an employee of Contractor for cause. Contractor shall promptly remove such employee(s) from FPC premises and take immediate steps to ensure that its performance under the contract will not be reduced.

Contractor agrees that at all times the employees of the Contractor furnishing or performing any of the services specified in the contract shall do so in a proper and professional manner. Contractor shall require all employees to dress in a professional, neat, clean manner while performing duties. Contractor will not allow employees to wear any clothing or accessory items that may be deemed indecent or controversial.

5.4.5 Role of Contractor, Campus Card Program, Financial Requirements, Commissions

FPC reserves the right to maintain a campus card access program.

Contractor shall pay any and all applicable property tax attributable to the food service operation and Contractor shall be responsible for collecting and remitting any tax, such as sales and use tax and employment tax.

Contractor shall keep full, timely and accurate records in accordance with generally accepted accounting practices. Contractor agrees that all books, records, documents, accounting procedures, and practices relevant to the Contract shall be subject to examination by FPC and/or other parties as deemed necessary by FPC.

Contractor will provide FPC with an audited financial statement no later than one (1) month after the completion of FPC's fiscal year end, which runs from September 1 through August 31. The financial statement shall be efficiently detailed as to provide an overview of sources of sales revenue and operating expenses. At the close of each accounting period, Contractor will provide FPC with a statement of net sales.

Contractor must be capable of accepting cash, credit and debit cards, in addition to FPC's meal plan card. If Contractor accepts cards such as Visa, Mastercard, or American Express, Contractor will pay all merchant charges associated with acceptance of these credit cards. Contractor will be PCI/DSS compliant TX-RAMP, and HECVAT compliant.

Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of cardholder data. In the event of a breach of any of vendor's security obligations or other event requiring notification under applicable laws, Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend FPC and its regents, officers, and employees from and against any claims, damages, or other harm related to such a breach.

Contractor agrees to send all FPC invoices to the attention of Accounts Payable. Original invoices for FPC purchases should not be sent directly to individual FPC employees or departments. Copies of invoices may be sent to departments upon their request.

Contractor shall within twenty (20) calendar days following the last day of each quarterly accounting period, submit to FPC a detailed operating statement indicating Gross Sales as defined herein for that period.

Contractor shall submit quarterly all necessary information to appropriately audit the payment terms of the contract to FPC's VP of Administrative Services / CFO for commissions rendered during the Contract period. FPC's acceptance of payment from Contractor shall not be deemed to be a waiver by FPC of any breach by Contractor of any term or condition in the Contract.

5.4.6 Role of Contractor, Menus and Incentives

The Proposal must include sample menus of all food and beverages Contractor proposes to serve in a typical month. The Proposal must also include a comprehensive list of all items available from the Contractor's catering service. Also, the Proposal must list any incentives or complementary food that Contractor proposes to provide to FPC's employees or students.

Contractor's invoice to FPC for the Board Plan shall be based on the weekly head count of students authorized on the meal plan.

Contractor will work with any student with special needs as documented by a physician and which are unavailable through the standard meal plan. This also applies to residence hall students confined by a physician to their room for medical reasons.

Contractor can expect patrons in dining areas to remove their own trays, dishes, and utensils at the completion of their meal to the designated location.

Contractor will be expected to offer meals for camps and early residence hall arrivals, if requested.

Generally, it is expected that the dining hall food services will be all-you-can-eat. FPC does want to look at optional plans, such as access to the dining hall at other times of the day for drinks or snacks.

5.4.7 Role of Contractor, Use of Renovation/Investment Capital

If the awarded vendor's proposal included renovation/investment capital, the Contractor shall be responsible and bear the costs of all expenses for any renovations, alterations, changes or modifications initiated by the Contractor and shall not be reimbursed by FPC at the expiration of the contract period. The Contractor must provide all fixtures and equipment not included currently. The Contractor shall agree that no structural changes will be made which adversely affects building codes or the aesthetics and/or general operation of the building. Prior to any construction, the Contractor will submit for approval by FPC all plans and specifications, including design of the area to be renovated, fixtures, signs, and other areas that are visible to the public. Exterior building signs will need pre-approval from FPC.

Vendors are responsible for removal of all debris from the FPC campus. Use of FPC dumpsters must be pre-approved. An inspection will be made after completion of any refurbishing work to ensure that the project area is left clean and to code.

Utilities are brought to the premises by FPC. Contractor is responsible for connecting the utilities to their equipment and for paying all related construction costs and connections.

Contractor shall schedule all work through FPC's assigned representatives. At no time shall the Contractor perform any work at site that has not been prescheduled through FPC.

Any and all renovations through a third-party and/or subcontractor(s) pursuant to construction must be pre-approved by FPC.

Funds would be used with the mutual agreement of Contractor and FPC.

5.4.8 Role of Contractor, Transition Management Plan

Other than the incumbent, the Contractor awarded the contract will submit two months prior to starting at the facility a transition management and start-up plan. It should include, but not be limited to:

- Objectives to be accomplished
- List of participants involved
- Timelines
- Written security plan
- List of possible outside personnel to assist with start-up
- Written key control plan for approval by FPC

5.4.9 Role of Contractor, Training and Safety

Contractor will be responsible for training all new hires as well as providing continuing education on security, safety, and productivity. The Contractor will maintain records of training to be reviewed upon request. Contractor is required to provide hazard training for their staff, including but not limited to, bloodborne pathogen training and the right to know. Contractor must

maintain an exposure control plan and train all employees on hazardous material exposure procedures.

5.4.10 Role of Contractor, Surrender of Premises

Upon the expiration or sooner termination of the awarded contract, the Contractor shall peaceably yield and deliver unto FPC in good order and condition, reasonable wear and tear excepted, all interest in the food service facilities, excluding personal property, inventory and supplies on the premises, and such interest shall thereupon automatically vest in FPC. Contractor's failure to remove its personal property within ten (10) business days after the termination or expiration of the contract shall be deemed to be an abandonment of its personal property. FPC will make all necessary repairs to the premises which may be required as a result of the removal of trade fixtures and other personal property and may reasonably charge Contractor for such repairs.

SECTION 6

PRICING PROPOSAL

Proposal of: _____

(Proposer Company Name)

To: Frank Phillips College

Ref: Operation & Management of Campus Food Services

RFP No.: 2025-26-001

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish Operation & Management of Campus Food Services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Pricing Proposal for Services Offered (use a separate sheet if necessary)

6.1.1 See Sections A and B below. Pricing Proposal must be filled out completely, signed, and returned.

6.2 Added Value (use a separate sheet if necessary)

6.2.1 Describe any proposed benefits to FPC from Proposer, not otherwise set forth herein, which would be an added value to FPC. Examples of these benefits might include sponsorship of events, scholarships, and the like. Such benefits are wholly voluntary and are not a requirement of this RFP but may be considered by FPC in determining the best value for the college.

6.2.2 Added Value, if any, Per Year for a Five (5) year contract:

- President’s discretion funds: \$ or meals: _____
- Event sponsorship funds: \$ or meals: _____
- Gratis meals: \$ or meals: _____
- Other: \$ or meals: _____

6.2.3 Added Value, if any, Per Year for a Ten (10) year contract:

- President’s discretion funds: \$ or meals: _____
- Event sponsorship funds: \$ or meals: _____
- Gratis meals: \$ or meals: _____
- Other: \$ or meals: _____

6.3 (A) With Reference to a Five (5) Year Contract

(A) Information Specific to this RFP - Proposer must provide the following information in their Proposal with reference to being awarded a five (5) year contract.

6.3.1 Describe the flexibility and options of Proposer's pricing and bonus programs available to its customers, including FPC employees, non-residential commuter students, early arrivals, and summer camps that may be using the FPC campus.

6.3.2 Describe in detail the food service plan(s) and meal plan(s) the Proposer proposes to offer at FPC, including without limitation (1) any branded or non-branded concepts, and (2) a sample four (4) week menu including a comprehensive list of all menu items, portion sizes, raw food specifications, detailed nutritional information, and sales prices for all menu items. List any other options that might be available to students.

6.3.3 Describe if Proposer would be able to add a "Food Truck" (mobile kitchen with a focused menu) to its customer service menu to be available for use at remote campus locations, sporting events, and/or student activities.

6.3.4 Catering: Each proposal shall include a catering menu that lists all items available from the Proposer's catering service, along with the price that the vendor would charge FPC (inside) or anyone else (outside) for each item. As part of the proposal process, Proposer will provide a percentage rate of commission to pay FPC for both types of catering.

6.3.5 Retail/Direct Sales: This covers the sales that the vendor makes directly to customers without the meal plan. As part of the proposal process, the Proposer will provide a percentage rate of commission to pay FPC for retail sales. The minimum acceptable percentage rate of commission is 9%. The vendor shall present FPC with payment for each quarter's commission no later than the tenth (10th) day of the following month. The payment will be attached to a calculation that shows how the commission was determined. The calculation is to be proposed percentage times the total sales of the vendor. The calculation is to exclude any sales tax. FPC is not to earn a commission on the sales taxes collected by the vendor.

6.3.6 Concession Sales: This covers the sales that the vendor makes directly to customers through a concession venue, if available. As part of the proposal process, the Proposer will provide a percentage rate of commission to pay FPC for concession sales.

6.3.7 (A) Proposer's Financial Proposal - Proposer must provide the following information in their Proposal with reference to being awarded a five (5) year contract.

Category	Commission: Percent of Annual Gross Sales
Retail / Direct Sales	%
Catering (Inside)*	%
Catering (Outside)**	%
Concessions	%

*Catering for FPC

**Catering for anyone other than FPC

Meal Plan Rates per # of Participants	\$ Rate

6.3.8 (A) Facilities Improvement Financial Contribution with reference to being awarded a five (5) year contract: Proposer proposes to provide the following additional financial contribution for proposed renovation, improvements, and capital investment to add new or renovate food service facilities in the amount of:

6.4 (B) With Reference to a Ten (10) Year Contract

(B) Information Specific to this RFP - Proposer must provide the following information in their Proposal with reference to being awarded a ten (10) year contract.

6.4.1 Describe the flexibility and options of Proposer's pricing and bonus programs available to its customers, including FPC employees, non-residential commuter students, early arrivals, and summer camps that may be using the FPC campus.

6.4.2 Describe in detail the food service plan(s) and meal plan(s) the Proposer proposes to offer at FPC, including without limitation (1) any branded or non-branded concepts, and (2) a sample four (4) week menu including a comprehensive list of all menu items, portion sizes, raw food specifications, detailed nutritional information, and sales prices for all menu items. List any other options that might be available to students.

6.4.3 Describe if Proposer would be able to add a "Food Truck" (mobile kitchen with a focused menu) to its customer service menu to be available for use at remote campus locations, sporting events, and/or student activities.

6.4.4 Catering: Each proposal shall include a catering menu that lists all items available from the Proposer's catering service, along with the price that the vendor would charge FPC (inside) or anyone else (outside) for each item. As part of the proposal process, Proposer will provide a percentage rate of commission to pay FPC for both types of catering.

6.4.5 Retail/Direct Sales: This covers the sales that the vendor makes directly to customers without the meal plan. As part of the proposal process, the Proposer will provide a percentage rate of commission to pay FPC for retail sales. The minimum acceptable percentage rate of commission is 9%. The vendor shall present FPC with payment for each quarter's commission no later than the tenth (10th) day of the following month. The payment will be attached to a calculation that shows how the commission was determined. The calculation is to be proposed percentage times the total sales of the vendor. The calculation is to exclude any sales tax. FPC is not to earn a commission on the sales taxes collected by the vendor.

6.4.6 Concession Sales: This covers the sales that the vendor makes directly to customers through a concession venue, if available. As part of the proposal process, the Proposer will provide a percentage rate of commission to pay FPC for concession sales.

6.4.7 (B) Proposer's Financial Proposal - Proposer must provide the following information in their Proposal with reference to being awarded a ten (10) year contract.

Category	Commission: Percent of Annual Gross Sales
Retail / Direct Sales	%
Catering (Inside)*	%
Catering (Outside)**	%
Concessions	%

*Catering for FPC

**Catering for anyone other than FPC

Meal Plan Rates per # of Participants	\$ Rate

6.4.8 (B) Facilities Improvement Financial Contribution with reference to being awarded a ten (10) year contract: Proposer proposes to provide the following additional financial contribution for proposed renovation, improvements, and capital investment to add new or renovate existing food service facilities in the amount of:

6.5 FPC's Payment Terms

FPC's standard payment terms for services are "Net 30 days." Indicate below the prompt payment discount that Proposer will provide to FPC, if any:

Prompt Payment Discount: _____% _____ days/net 30 days

Respectfully submitted,

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Email: _____

Date: _____

APPENDIX ONE

PROPOSAL REQUIREMENTS

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APPENDIX ONE, SECTION 1

GENERAL INFORMATION

1.1 Purpose

FPC is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by FPC.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

1.2 Proposal Requirements and General Instructions

- 1.2.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.2.2 Proposers must submit proposals in accordance with the specifications in **Section 3**. Each variance to these specifications must be clearly stated in the proposal. Slight variations to specifications might be accepted; however, FPC will be the sole judge as to what variations will be allowed.
- 1.2.3 All products and/or services not specifically mentioned in this RFP, but which are necessary to provide the functional capabilities described by FPC shall be included in the proposal.
- 1.2.4 Any deviations to any of the specifications shall be clearly noted in writing by the Proposer and shall be included with the proposal.
- 1.2.5 Proposals and any other information submitted by Proposer in response to this RFP will become the property of FPC.
- 1.2.6 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by FPC, at FPC's sole discretion.
- 1.2.7 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.

- 1.2.8 FPC makes no warranty or guarantee that an award will be made as a result of this RFP. FPC reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP deemed to be in FPC's best interest. FPC reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to FPC, at FPC's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.2.9 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by FPC, in FPC's sole discretion.

1.3 Preparation and Submittal Instructions

1.3.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5** of this RFP). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.3.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **Appendix One**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by FPC, in its sole discretion.

1.3.3 Pricing Proposal

Proposer must complete and return the Pricing Proposal (ref. **Section 6** of this RFP). The Proposer should answer each applicable section. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

FPC will not recognize or accept any charges or fees to perform the services that are not specifically stated in the Pricing Proposal.

1.3.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **Appendix One**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.3.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **Appendix One**) as part of its proposal.

Any proposal received without a completed and signed Addenda Checklist may be rejected by FPC, in its sole discretion. It is the Proposer's responsibility to make sure they have obtained all addenda.

Addenda, if any, will be posted on FPC's website at www.fpctx.edu/procurement-services.

1.3.6 Felony Conviction Notification Form

Proposer must complete, sign and return the attached Felony Conviction Notification Form (ref. **Section 5 of Appendix One**) as part of its proposal. The Felony Conviction Notification Form must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Felony Conviction Notification Form may be rejected by FPC in its sole discretion.

1.3.7 Delinquent Franchise Taxes Form

Proposer must complete, sign and return the attached Delinquent Franchise Taxes Form (ref. **Section 6 of Appendix One**) as part of its proposal. The Delinquent Franchise Taxes Form must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Delinquent Franchise Taxes Form may be rejected by FPC in its sole discretion.

1.3.8 Prohibition on Contracts with Companies Boycotting Israel Form

Proposer must complete, sign, and return the attached Prohibition on Contracts with Companies Boycotting Israel Form (ref. **Section 7 of Appendix One**) as part of its proposal. The Prohibition on Contracts with Companies Boycotting Israel Form must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Prohibition on Contracts with Companies Boycotting Israel Form may be rejected by FPC in its sole discretion.

1.3.9 Prohibition on Contracts with Companies Boycotting Energy Companies Form

Proposer must complete, sign and return the attached Prohibition on Contracts with Companies Boycotting Energy Companies Form (ref. **Section 8 of Appendix One**) as part of its proposal. The Prohibition on Contracts with Companies Boycotting Energy Companies Form must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Prohibition on Contracts with Companies Boycotting Energy Companies Form may be rejected by FPC in its sole discretion.

1.3.10 Prohibition on Contracts with Companies that Discriminate against Firearms Entity or Trade Association Form

Proposer must complete, sign, and return the attached Prohibition on Contracts with Companies that Discriminate against Firearms Entity or Trade Association Form (ref. **Section 9 of Appendix One**) as part of its proposal. The Prohibition on Contracts with Companies that Discriminate against Firearms Entity or Trade Association Form must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Prohibition on Contracts with Companies that Discriminate against Firearms Entity or Trade Association Form may be rejected by FPC in its sole discretion.

1.3.11 Submission

Proposer should submit all proposal materials enclosed in a sealed envelope, box, or container, which shall be properly identified with the Proposal number, project name, proposal due date and time, and the name and address of the Proposer (ref. **Section 2.1** of this RFP).

Upon Proposer's request and at Proposer's expense, FPC will return to a Proposer its proposal received after the Submittal Deadline if the proposal is properly identified. FPC will not under any circumstances consider a proposal that is received after the Submittal Deadline.

FPC will not accept proposals submitted by telephone, proposals submitted by Facsimile ("**FAX**") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to FPC. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without FPC's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to FPC, in FPC's sole discretion.

By signing the Execution of Offer (ref. **Section 2 of Appendix One**) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on FPC that are not set forth in this RFP or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into an agreement with FPC as specified herein and that such intent is not contingent upon FPC's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

APPENDIX ONE, SECTION 2

EXECUTION OF OFFER

Campus Food Services Management & Operations

RFP# 2024-25-003

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSAL OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSAL, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS AT FRANK PHILLIPS COLLEGE. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT FRANK PHILLIPS COLLEGE'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

1. By signature hereon, Respondent offers and agrees to furnish to FPC the products and/or services more particularly described in its proposal, at the prices quoted in the proposal, and to comply with all terms, conditions and requirements set forth in the RFP documents and contained herein.
2. By signature hereon, Respondent affirms that he has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted proposal.
3. By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.
4. By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or institution represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
5. By signature hereon, Respondent represents and warrants that:
 - a. Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions, and requirements of the RFP;
 - b. Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFP;
 - c. Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances;
 - d. Respondent understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;

- e. Respondent, if selected by FPC, will maintain insurance as required by the Contract;
 - f. All statements, information, and representations prepared and submitted in response to this RFP are current, complete, true, and accurate. Respondent acknowledges that FPC will rely on such statements, information, and representations in selecting the Successful Respondent. If selected by FPC as the Successful Respondent, Respondent will notify FPC immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
6. By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements which may result from the submission of Respondent's proposal.
 7. By signature hereon, Respondent certifies as follows:
"Under Section 2254.004, *Texas Government Code*, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and qualifications only."
 8. By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and FPC.
 9. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (ref. Section 2155.004 *Texas Government Code*).
 10. Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
 11. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
 12. By signature hereon, Respondent agrees to defend, indemnify, and hold harmless FPC, all of its board members, agents and employees from and against all claims, actions, suits, demands, proceedings, costs and expenses (including reasonable attorneys' fees and court costs), damages, and liabilities, arising out of, connected with, or resulting from any negligent or willful acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Respondent's proposal.
 13. By signature hereon, Respondent agrees to abide by and fully comply with FPC's smoking policy. Respondent understands that FPC has a tobacco-free campus and this applies to the project at issue and Respondent agrees that all persons working under or for Respondent will abide by this policy in all respects.

14. By signature hereon, Respondent agrees that FPC's bid protest policy, which is included in the RFP, will govern any protests related to this RFP and agrees to the terms of same.
15. By signature hereon, in accordance with the Texas Government Code, Respondent represents and verifies that it does not, and will not during the term of the contract, if awarded, boycott Israel and that Respondent is not identified by the Texas Comptroller as boycotting Israel. "Boycott" as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
16. By signature hereon, Respondent confirms that neither Respondent nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government Procurement or Nonprocurement Programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Respondent further certifies that it is not identified on the Texas Comptroller's list of scrutinized companies doing business with Sudan or Iran or a list of companies known to have contracts with or to provide services or supplies to a foreign terrorist organization. Respondent will provide immediate written notification to FPC if at any time prior to award Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when FPC executes the Agreement, if any. If it is later determined that Respondent knowingly rendered an erroneous certification, in addition to the other remedies available to FPC, FPC may terminate the Agreement, if any, for default by Respondent.

Please complete the following:

Respondent's EIN No: _____

If Sole Owner:

Respondent's SS No: _____

If a Corporation:

Respondent's State of Incorporation: _____

Respondent's Charter No: _____

Please identify each person who owns at least 25% of Respondent's business entity by name and social security number:

Name

Social Security Number

Name

Social Security Number

Name

Social Security Number

Name

Social Security Number

Submitted and Certified By:

(Respondent's Name)

(Authorized Signature)

(Date)

(Printed Name/Title)

(Telephone Number) & (Email)

(Street Address)

(City, State, Zip Code)

APPENDIX ONE, SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. Title each section in the following order and submit each section in a separate labeled tab for easy identification.

Cover letter: Provide a cover letter that shall not exceed two (2) pages in length summarizing key points in the proposal.

3.1 Proposer Profile

3.1.1 Legal name of Proposer Company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, FPC prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

- 3.1.2 State whether Proposer will provide a copy of its audited financial statements for the past two (2) years. Audited are preferred, but reviewed statements will be accepted.
- 3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

- 3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.
- 3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under an Agreement with FPC (if any).
- 3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.
- 3.1.7 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of FPC? If yes, Proposer will explain.
- 3.1.8 Proposer will provide the name and Social Security Number, if requested, for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to Section 231.006, Family Code, and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the Texas Public Information Act, Chapter 552, Government Code, and other applicable law.

3.2 General Requirements

- 3.2.1 Proposer will submit a work plan with key dates and milestones. This should include:
- Identification of tasks to be performed
 - Timeframes to perform and implement these tasks
 - Provide a detailed transition timeline for the first six months of operation. Include any details on proposer construction/renovation schedules.
 - Objectives to be accomplished
 - List of participants involved
- 3.2.2 Proposer will provide summary resumes for its proposed key personnel who will be providing services, including their specific experiences with similar projects and number of years of employment with Proposer.
- 3.2.3 State if Proposer takes exception to any terms or conditions as set forth in the Proposed Agreement (ref. Appendix Two). Proposer must submit a list of any exceptions.

3.3 Additional Information - Management Plan and Approach

- 3.3.1 Provide a detailed description of the duration and extent of experience in the operation of food services.
- 3.3.2 Describe your proposed hours of operation.

- 3.3.3 Provide a table of your company's organization and a plan for the administrative management and supervision staffing proposed under the specifications of this RFP.
- 3.3.4 Describe typical staffing patterns, pay scales and benefit packages for typical local employees.
- 3.3.5 Provide a summary of your operational food plan and food concepts, with detailed descriptions of services available, franchised food options available, sample meal plans, pricing structures for Board plans, and promotional activities for dining hall environments. Compare exclusive rights program versus non-exclusive rights program.
- Is there an option for a "meal-plan replacement" at venues?
 - Is there an option for the cafeteria being open all day for students with no limit on visits or times?
- 3.3.6 Provide a summary of your operational plan and concepts, with detailed descriptions of services available, pricing structures, and promotional activities for retail environments.
- 3.3.7 Provide a summary of your operational plan and concepts, with detailed descriptions of services available, pricing structures, and promotional activities, for a catering program.
- 3.3.8 Provide a complete balance sheet or annual report as of your last fiscal year of operation.
- 3.3.9 List the make, model and year of all vehicles Proposer will use in the performance of services.
- 3.3.10 Describe your company's ability to interface with the College's Jenzabar system. There should be a seamless integration between the two systems.
- 3.3.11 Explain how Proposer plans to assure pricing will remain competitive with prices in the local community.
- 3.3.12 If a reward program or punch card meal ticket is available, please state particulars of the program(s) that is offered through your company. FPC currently uses the campus ID card that is swiped for entrance into cafeteria for Residence Life students.
- 3.3.13 Describe opportunities the Proposer will provide for students to buy with (cash, credit card, debit card, Apple Pay, Google Pay).
- 3.3.14 State what Proposer feels is its "missed-meal" factor in a percentage form.
- 3.3.15 Describe any discounts, other than stated elsewhere, that will be afforded College employees and College departments.
- 3.3.16 Meal plan rates are to be pro-rated for partial weeks. State the percentage rate for breakfast, lunch and dinner. (Example: Breakfast will be 1/6 of the daily rate; lunch will be 1/3; dinner will be 1/2 of the daily rate.)

3.4 Experience/Reputation/References

- 3.4.1 Describe your company's qualifications and experience in managing college/university food services facilities.
- 3.4.2 Confirm that upon FPC's request, Proposer will allow the College to (a) visit and inspect any of Proposer's facilities and food service operation sites, and (b) interview employees, officers, agents and other representatives of Proposer.
- 3.4.3 Provide a client list that includes length of services, sales volume, and the name, email, and telephone number of the college or university administrator responsible for the food service. Please identify at least three (3) clients similar in nature to the College.
- 3.4.4 Discontinued client list: Provide a list of all college and university accounts that were canceled or not renewed during the past five (5) years, including the reason for termination, length of service, sales volume, and the name, email, and telephone number of the college or university administrator responsible for the food service.
- 3.4.5 How many accounts is Proposer servicing that equal the size and scope of this RFP?
- 3.4.6 How many college/university accounts are in your client base?

3.5 Financial Commitment/Investments

- 3.5.1 Describe your detailed facility plans and financial commitment to enhance the current facilities of the food service cafeteria located on the Main Campus and any of the quick-serve venues. Include a preliminary detailed budget which clearly delineates the components of your proposed capital investment, if any.
- 3.5.2 Provide a drawing/schematic design of Contractor's proposed facility in the current cafeteria location.
- 3.5.3 Include your estimated timeline/schedule for completion of the proposed facility enhancements. Include the earliest date your company can begin the proposed facility enhancements and how many days' notice your company would need to begin the enhancements, if the planned date is postponed.
- 3.5.4 Describe your plans for computerization, automation, technology, point-of-sale systems (POS), etc. and explain how implementation of these plans will benefit the College.
- 3.5.5 Website/e-commerce plans: Please include a detailed description of your company's plans to offer a dining services website.

3.6 Miscellaneous

- 3.6.1 Proposer will provide a detailed list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to FPC. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.2 TX-RAMP: Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Contractor represents and warrants that it complies with the requirements of the state risk and authorization management program and Contractor agreed that through the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of any ensuing contract.

<https://dir.texas.gov/information-security/texas-risk-and-authorizationmanagement-program-tx-ramp>

APPENDIX ONE, SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: FRANK PHILLIPS COLLEGE

Ref.: Food Services Management & Operations

RFP No.: 2025-26-001

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable). It is the Proposer's responsibility to make sure they have obtained all addenda. Addenda, if any, will be posted on FPC's website at www.fpctx.edu/procurement-services.

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE, SECTION 5

FELONY CONVICTION NOTIFICATION FORM
FRANK PHILLIPS COLLEGE
REQUEST FOR PROPOSALS NO. 2025-26-001

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (1) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the Contract."

This notice is not required of a publicly held Corporation

I certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

NAME: _____

A. I have not been convicted of a felony.

Signature: _____ **Date:** _____

B. I have been convicted of a felony.

Name of Felon (s): _____
Details of Conviction (s): _____

Signature: _____ **Date:** _____

C. The associated firm (or practice) is owned or operated by the following individual(s) who has/have been convicted of a felony.

Name of Felon (s): _____
Details of Conviction (s): _____

Signature: _____ **Date:** _____

APPENDIX ONE, SECTION 6

DELINQUENT FRANCHISE TAXES FORM

Each corporation contracting with the College shall certify that its franchise taxes are current. If the corporation is exempt from payment of franchise taxes or is an out-of-state corporation not subject to Texas franchise tax, it shall certify a statement that effect. Making a false statement as to corporate franchise tax status shall be considered a material breach of the contract and shall be grounds for cancellation of the contract.

I, the undersigned agent for the corporation, named below, certify that the information concerning delinquent franchise taxes has been reviewed by me and the following information furnished is true to the best of my knowledge.

VENDOR'S NAME: _____

AUTHORIZED CORPORATION OFFICIAL'S NAME: _____

- A. The corporation is exempt from payment of franchise taxes or is an out-of-state corporation not subject to Texas franchise tax; therefore, I am submitting a certified statement to that effect.

Signature of Corporate Official: _____

- B. The corporation is subject to Texas franchise tax. I hereby certify that there is no delinquent Texas franchise tax pending against the corporation.

Signature of Corporate Official: _____

- C. I hereby certify that there is delinquent Texas franchise tax pending against the corporation.

Signature of Corporate Official: _____

APPENDIX ONE, SECTION 7

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.

Exemption criteria include the following:

1. Company is a sole proprietorship
2. Company employs less than 10 full-time employees
3. Value of the contract is less than \$100,000

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. “Company” is defined to mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

I, _____, the _____
(Name of Certifying Official) (Title or Position of Certifying Official)

of _____,
(Name of Company)

does hereby verify on behalf of said company to Frank Phillips College that said company: (check one)

- ___1) Does not Boycott Israel and will not Boycott Israel (as that term is defined in Texas Government Code Section 808.001) during the term of this contract;
- ___2) Company is a sole proprietorship;
- ___3) Company employs less than 10 full-time employees;
- ___4) Value of the contract is less than \$100,000

Signature of Certifying Official

Title

Date of Certification

APPENDIX ONE, SECTION 8

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ENERGY COMPANIES

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must indicate in its Response and state why the certification is not required.

Exemption criteria include the following:

1. Company employs less than 10 full-time employees; AND
2. Value of the contract is less than \$100,000
3. Term "company" does not include a sole proprietorship.

“Boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A).”

I, _____, the _____
(Name of Certifying Official) (Title or Position of Certifying Official)

of _____,
(Name of Company)

does hereby verify on behalf of said company to Frank Phillips College that said company: (check one)

- ___ 1) Does not Boycott energy companies and will not Boycott energy companies (as that term is defined in Texas Government Code Section 808.001) during the term of this contract;
- ___ 2) Company is a sole proprietorship;
- ___ 3) Company employs less than 10 full-time employees; AND Value of the contract is less than \$100,000

Signature of Certifying Official

Title

Date of Certification

APPENDIX ONE, SECTION 9

PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARMS ENTITY OR TRADE ASSOCIATION

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

Exemption criteria include the following:

1. Company employs less than 10 full-time employees; AND
2. Value of the contract is less than \$100,000

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association."

I, _____, the _____
(Name of Certifying Official) (Title or Position of Certifying Official)

of _____,
(Name of Company)

does hereby verify on behalf of said company to Frank Phillips College that said company: (check one)

- ___1) (a) Does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association;
- ___2) Company employs less than 10 full-time employees; AND Value of the contract is less than \$100,000

Signature of Certifying Official

Title

Date of Certification

APPENDIX TWO

PROPOSED AGREEMENT

This Agreement to provide Food Services Management & Operations ("**Agreement**") is made and entered into effective as of **DATE, 2026 ("Effective Date")**, by and between **FRANK PHILLIPS COLLEGE**, a public junior college authorized under the laws of the State of Texas ("**FPC**"), and **NAME ("Contractor")**.

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

1. **TERM** - The term of this Agreement will begin on the Effective Date and expire **May 31, 2031 (term TBD)**.
 - A. **(TBD)** FPC will have a unilateral option to renew the Contract on the same terms for one additional five (5) year term, June 1, 2031 through May 31, 2036. Contractor must agree to provide a sixty (60) day extension of services at the end of any Contract term, including any renewal period, under the same terms, conditions and at the same cost designated on the Contract if so requested by FPC.
 - B. Time is of the essence in the performance of Contractor's duties. Failure of the Contractor to notify FPC sufficiently in advance of inability to complete within the delivery schedule shall grant FPC the option of canceling the order, purchasing from the best available source, and charging the Contractor the difference between the Contract price and actual purchase, if any, plus cost of handling. Notwithstanding the foregoing, FPC shall have no obligation to accept late performance or to waive timely performance by Contractor.
 - C. In no event shall changes be permitted without the express prior written authorization of FPC. Any such authorizations shall be in the form of a written Contract Amendment signed by both parties.
2. **TRANSITION PERIOD** - Contractor agrees that if this Agreement expires or is terminated for any reason, then, at FPC's sole option, Contractor will continue to perform the services (ref. **Section 3**) in accordance with the terms and conditions of this Agreement until FPC contracts with a new qualified and experienced contractor(s) to perform the services or is able to perform the services in-house; provided that Contractor will not be required to continue performing the services for more than four (4) months after expiration or termination of this Agreement.

Contractor will cooperate and assist with FPC's efforts to transition to another contractor(s) or to perform the food service management & operations in-house.

3. **SCOPE OF WORK**

- 3.1 Contractor will perform the scope of the work ("**Work**") set forth in **Exhibit A**, Pricing Proposal, any Scope of Work attachments, and questions/answers to the Proposer's General Questionnaire, attached and incorporated for all purposes, to the satisfaction of FPC. Time is of the essence in connection with this Agreement. FPC will have no obligation to accept late performance or waive timely performance by Contractor.
- 3.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for the performance of the Work.

3.3 Upon execution of this Agreement, all services previously performed by Contractor on behalf of FPC and included in the description of the Work will become a part of the Work and will be subject to the terms and conditions of this Agreement.

4. **PERMITS AND LICENSES** – Contractor will obtain and keep in effect all necessary permits, licenses, and notices required for its performance under this Agreement, and will post or display, if applicable, in a prominent place the permits, licenses and notices as required by applicable laws.

5. **FINANCIAL TERMS AND CONDITIONS**

5.1 All revenues generated under this Agreement shall be recorded in Contractor's general ledger. Contractor shall process all cash sales through cash registers, maintain cash register tapes and sales records locally, and make such tapes and records accessible to FPC upon request.

5.2 Each charge sale on credit shall be treated as a sale for the full price in the month when such charge or sale is made, irrespective of the time when the Contractor shall receive payment.

5.3 The Contractor shall maintain appropriate internal accounting controls and keep locally complete and proper books, records and accounts of the Contractor's Gross Revenue (as the term is defined herein), both for cash and on credit; said books, records and accounts, including any sales or other tax reports that the Contractor may be required to furnish to any government or governmental agency, shall at all reasonable times be open to the inspection of FPC or their designee for as long as such records are required to be maintained by Texas law.

5.4 FPC may, in any Contract year, cause an audit of the business of the Contractor to be made by a certified public accountant of FPC's own selection. If the statement of Gross Revenue previously made by the Contractor to FPC shall be found to be less than 98 percent of the amount of the Contractor's Gross Revenue shown by such audit, and if a commission is found to be due, the Contractor shall pay for (1) the cost of such audit, (2) the additional commission therein shown to be payable by the Contractor to FPC, (3) a penalty of ten percent (10%) on understated commissions due, and (4) a one and one-half percent (1.5%) interest penalty per month on all understated commissions due; otherwise, the cost of such audit shall be paid by FPC.

6. **PAYMENT TERMS/COMMISSIONS**

6.1 Initial four-week payment: prior to the commencement of each year of operations hereunder, Contractor shall submit to FPC an invoice for the amount equivalent to the estimate of Contractor's charges for serving Board Plan patrons for one (1) four-week Accounting Period ("Initial Payment"). For the first year of operations, the initial payment shall be (TBD). FPC shall remit the amount of such initial payment to Contractor on or about September 5 of the applicable year.

The initial payment shall be retained by Contractor and shall be used from time to time by Contractor in part to make purchases. Such payments shall be credited to FPC at the time of the last billing made by Contractor to FPC at the end of the operating year (May billing period) or if this Agreement expires or terminates prior thereto, on the invoice for the last billing period prior to the expiration or the termination of this Agreement (and to the extent such credit exceeds the last billing Contractor shall immediately issue payment to FPC for such amount.

By August 1 of each year thereafter, Contractor will submit to FPC a statement setting forth the increase or decrease, if any, in such initial payment from the amount thereof in the prior year, which increase or decrease shall be determined with respect to the percentage of the agreed-upon rate increase (if any) for the upcoming year. Provided, however, that if the number of mandatory meal

plans increase by **TBD** over the amount thereof in the previous Fall semester, then Contractor and FPC will mutually agree on the impact of such increase on the succeeding year's initial payment.

Contractor shall, within twenty (20) calendar days following the last day of each Accounting Period, submit to FPC a detailed operating statement indicating Gross Revenue and Net Receipts as defined herein for that period. The sales shall be reported in detail per the following categories (or similar breakdown of categories as agreed upon by FPC and Contractor): retail/direct sales, caterings and concessions, and commissions.

6.2 Contractor's Accounting Periods are as follows: **TBD**

Contractor shall calculate commissions in an annual amount equal to **TBD**.

6.3 Commission Payment: Within thirty (30) days after the end of each Accounting Period, Contractor will pay to FPC the commissions due FPC pursuant to this Agreement. Commissions will be based on the accumulation of all sales income from Contractor operations (retail/direct sales, catering and concession sales), excluding amounts remitted by FPC to Contractor for resident meal plan charges and any applicable taxes. Contractor shall make all checks payable to "Frank Phillips College" and shall deliver the monthly payment to FPC's Business office, accompanied by a written report for the preceding month showing the commission due and the dollar amount the commission is based on. If available, the commission payment may be made by ACH transmittal/deposit.

6.4 Within five (5) days after the end of each week, Contractor will submit to FPC's Business Office, Attn: Accounts Payable, an invoice for amounts due Contractor from the prior week for mandatory meal plan daily rates, which includes the associated declining balance, and FPC catering.

At the beginning of each semester, FPC shall furnish Contractor with a list of all persons entitled to meals at Board Plan rates and shall advise Contractor weekly in advance of any changes in the list. Billings to FPC will be based on the number of persons listed each Monday morning before breakfast. No allowance will be made for meals or days which contract patrons miss, and partial days will be considered full days for billing purposes.

Invoices submitted to FPC shall be paid within thirty (30) days of the invoice date. In the event invoices are not paid within thirty (30) days of the invoice date, interest shall be charged on each invoice at 1% per month, not to exceed 12% per annum.

6.5 FPC, a governmental agency of the State of Texas, is exempt from Texas Sales & Use Tax on the food service management & operations in accordance with Section 151.309, *Texas Tax Code*, and Title 34, *Texas Administrative Code*, Section 3.322.

6.6 Within thirty (30) days after termination of this Agreement, Contractor will submit a final statement of revenue which will set forth all amounts due and remaining unpaid to FPC and upon approval of the Final Revenue by FPC, Contractor will pay to FPC the amount due under the Final Revenue.

6.7 Notwithstanding any provision to the contrary, Contractor will be obligated to make any revenue payment to FPC if Contractor is in breach or default under this Agreement.

- 6.8 No revenue payment made will be or construed to be final acceptance or approval of that part of the food service management & operations to which the revenue payment relates or relieves Contractor of any of its obligations under this Agreement.
- 6.9 Any other amounts owed to FPC by the Contractor shall be paid within thirty (30) calendar days after receipt of the invoice.
- 6.10 Except for the obligation of FPC to pay Contractor certain amounts pursuant to the terms of this Agreement, FPC will have no other liability to Contractor or to anyone claiming through or under Contractor, by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of FPC to Contractor, no present or future agent, officer, director, employee, or FPC Board of Regents, or anyone claiming under FPC, has or will have any personal liability to Contractor, or to anyone claiming through or under Contractor, by reason of the execution or performance of this Agreement.
- 6.11 (Financial Investment - TBD)
- 6.12 Pricing (TBD)
7. **QUALITY CONTROL** - FPC desires to keep the "Service Areas" in an optimum state of cleanliness. Contractor will permit inspection of its operations at any time by FPC to determine that FPC's standards of quality and cleanliness are being met.
8. **SAFETY STANDARDS** - Acceptable safety standards which conform to industry standards will be followed by Contractor to assure safety for their staff as well as FPC staff, visitors, employees, and students.
9. **PERSONNEL; RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK**
- 9.1 Contractor agrees to:
- 9.1.1 maintain a staff of properly licensed, trained, and experienced personnel to ensure consistent, efficient and satisfactory performance under this Agreement;
- 9.1.2 that, at all times, the employees of Contractor furnishing or performing any of the Work specified under this Agreement will do so in a professional, good, workmanlike and dignified manner.
- 9.1.3 provide sufficient back-up personnel in times of staff shortages due to vacations, illness and inclement weather to ensure consistent, efficient and satisfactory performance under this Agreement.
- 9.1.4 have every employee and agent of Contractor assigned to duty on FPC's premises display on his or her person at all times while on FPC's premises an identification badge, including a picture of the employee or agent.
- 9.2 Contractor has the right to terminate any of its employees or personnel at any time. In addition, Contractor acknowledges that FPC has the right to (a) require identification from any person on FPC's premises, (b) refuse entry to persons having no legitimate business on FPC's premises, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized FPC representatives in the exercise of FPC's rights described in this section.

9.3 Contractor will advise FPC's representative of the telephone numbers of Contractor's management personnel and will arrange for at least one of Contractor's management personnel to be available at all times (24 hours a day, 7 days a week, 365/366 days a year) by telephone.

9.4 Each individual who is assigned to perform the food service management & operations under this Agreement will be an employee of Contractor or an employee of a permitted subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the food service management & operations under this Agreement. Prior to commencing the food service management & operations, Contractor will have an appropriate criminal background screening performed of all individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the food service management & operations is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on FPC's premises who has a history of criminal conduct unacceptable for a college campus, including violent or sexual offenses. Contractor will do follow this section any time a new employee is hired to perform the food service management & operations.

- 10. SUPERVISION; COORDINATION** – Contractor will provide, at all times, adequate and expert supervisory staff assigned exclusively to FPC to manage contractor's employees in the food services management & operations. The supervisory staff will be on FPC's premises at all times while the food services management & operations are being provided and will not leave FPC's premises until all services and security matters are completed each night. Neither FPC nor any representative of FPC will supervise Contractor's employees, personnel or agents performing the food services management & operations.

In addition, Contractor will provide an on-site manager assigned to the food services on a full-time basis. The on-site manager, with the assistance of a supervisor for each and every shift, will coordinate all activities connected with the provision of the food services management & operations specified under this Agreement and will meet with FPC's representative periodically, on mutually agreeable dates and times, to coordinate the enforcement of FPC's policies, the implementation of FPC's suggestions and requests, and the prompt resolution of complaints.

In addition, to the supervision of all food services management & operations, the on-site manager will become familiar with the emergency, fire, and disaster plans developed by FPC for FPC's premises and perform the duties assigned to the on-site manager by FPC as relates to the emergency, fire and disaster plans.

- 11. LABOR RELATIONS** - Contractor agrees to take immediate and reasonable steps to continue its provision of the services under this Agreement in the event of any labor dispute or other action involving its employees.

- 12. INDEPENDENT CONTRACTOR** - Contractor recognizes and agrees that it is engaged as an independent contractor and acknowledges that FPC has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with that status, that it will neither hold itself out as, nor claim to be an officer, partner, employee, or agent of FPC, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of FPC, including unemployment insurance benefits, social security coverage or retirement benefits. Contractor agrees to make its own arrangements for any fringe benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Laws. All of Contractor's employees providing services to FPC will be deemed employees solely of Contractor and will not be deemed for any purposes whatsoever employees or agents of, acting for or on behalf of, FPC. No acts performed or representations, whether oral or written, made by Contractor with respect to third parties will be binding upon FPC nor will same create any liability on the part of FPC.

13. INSURANCE

13.1 Contractor, consistent with its status as an independent contractor, will carry and will cause its subcontractors to carry, at least the following insurance in a form, with companies and in amounts (unless otherwise specified) as FPC may require:

13.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than:

Bodily Injury by Accident (Each Accident)	\$1,000,000
Bodily Injury by Disease (Each Employee)	\$1,000,000
Bodily Injury by Disease (Policy Limit)	\$1,000,000

All policies required herein must include (a) other states endorsement to include Texas if business is domiciled outside the State of Texas, (b) a waiver of all rights of subrogation and other rights in favor of FPC, and (c) FPC, its Board of Regents and employees as additional insureds.

13.1.2 Commercial General Liability Insurance with limits of not less than:

General Aggregate	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal Injury & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$50,000
Medical Expenses (any one person)	\$10,000

13.1.3 Commercial Automobile Liability Insurance covering all owned, non-owned or hired automobiles, with limits of at least \$1,000,000 Combined Single Limit Bodily Injury and Property Damage; and

13.1.4 Employee Dishonesty Insurance to protect the assets and property of FPC with limits of not less than \$500,000; and

13.1.5 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000 and (i) providing coverage in excess of coverages of, and (ii) "following form" subject to the same provisions as, the underlying policies required in the sections above.

13.2 Contractor will deliver to FPC:

13.2.1 Evidence, satisfactory to FPC, of the existence of all insurance promptly after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

13.2.2 Additional evidence, satisfactory to FPC, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation Professional Liability, Director and Officer Liability, and Employer's Liability, will name and the evidence will reflect FPC (and its Board and employees) as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days unconditional written notice to FPC.

13.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:

13.3.1 Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Employee Dishonesty Insurance and Director and Officer Liability Insurance, and Umbrella/Excess Liability Insurance will be kept in force until receipt of Final Payment by FPC to Contractor; and

13.3.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the services have been fully performed and accepted by FPC in writing.

14. REPORTING NEEDED REPAIRS - Contractor's employees will report to FPC Facilities & Maintenance, 806-886-5047 any conditions of dripping or leaking faucets, stopped toilets and drains, broken fixtures, pest control, all other necessary or appropriate repairs and any unusual happenings in the food service or on FPC's premises.

15. ACCESS TO FPC FACILITIES

15.1 Contractor and its employees, permitted subcontractors and agents may access only the food service area and those FPC facilities deemed necessary to perform Contractor's duties and obligations under this Agreement and will have no right of access to any other FPC facilities. Contractor and its employees, permitted subcontractors and agents will not use any FPC equipment, including computers, printers, typewriters, radios, televisions, telephones, desks, chairs or other equipment, and will not disturb papers or other items on desks or in open drawers or cabinets located on FPC's premises.

15.2 FPC will provide and maintain an appropriate, safe and habitable location in accordance with all applicable laws and regulations, for ongoing food service operations. FPC shall also keep the building in which the food service is located in compliance with all fire, building and electrical codes and regulations, including regulations governing fire alarms, smoke detectors, fire extinguishers, fire suppression and sprinkler systems, water pressure, plumbing and electrical service. If FPC requires Contractor to relocate the food service to another location, FPC shall provide reasonable notice of such move (given the peculiarities of the circumstances then at hand) and the parties shall undertake the relocation pursuant to terms and conditions mutually agreed upon and memorialized in an executed amendment to this Agreement.

15.3 FPC will permit Contractor to use certain space for food services management & operations. FPC will and does hereby license the space in its current as-is condition to Contractor for use by Contractor's employees, permitted subcontractors and agents in the performance of the food services management & operations and for no other purpose. The parties agree that this is a non-exclusive license to use the space and that FPC may enter the space at any time for any reason. No unlawful activities will be permitted in the use of the space. Contractor will comply with all laws applicable to the space. Contractor will cause all of its employees, subcontractors and agents to observe and comply with all applicable laws, including FPC's rules and regulations in connection with the use of the space.

Contractor will not modify, alter or repair the space or any other FPC facilities without the prior written approval of FPC.

Contractor agrees not to harm the space or make any use of the space that is offensive as determined by FPC. Contractor agrees that upon the termination of this Agreement for any reason, Contractor will remove Contractor-owned equipment and other effects, repair any damage caused by the removal and peaceably deliver up the space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any personal property of Contractor not removed within five (5) business days following the termination will be deemed abandoned by Contractor and FPC

may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Contractor.

Contractor agrees not to suffer any mechanic's lien to be filed against the space or the adjoining facilities by reason of any work, labor, services or materials performed at or furnished to the space for Contractor. Nothing in this Agreement will be construed as the consent of FPC to subject FPC's estate in the space or adjoining facilities to any lien.

Contractor agrees that the space is sufficiently equipped for Contractor to provide the food services management & operations in accordance with the terms and conditions of this Agreement.

FPC will provide utility services at existing outlets (heat, gas electricity, water and sewer) for the convenience of Contractor. Any modification to existing outlets required or requested by Contractor will be made at the sole discretion of FPC at Contractor's expense. In the event any utility service must be interrupted for repair or modification, FPC will provide Contractor with advance notice, if possible. FPC will not be responsible for interruptions in utility service to the space. However, FPC will exercise reasonable diligence in pursuing the restoration of interrupted utility service.

FPC will not be liable to Contractor, or any employee, subcontractor, agent, guest, or invitee of Contractor, for any loss, expense or damage either to the person or property sustained by reason of any condition of the space, or due to any act of any employee or agent of FPC, or the act of any other person whatsoever, other than to the extent caused by the negligent or intentional acts or omissions of FPC, its employees or agents, and to the extent allowed by law. It is expressly understood and agreed that FPC does not, in any way, waive its sovereign or governmental immunity or the official immunity of its employees. FPC expressly and affirmatively retains all immunity from suit and liability to which it or its employees are entitled under applicable law. Contractor agrees to pay on demand FPC's expenses incurred in enforcing any obligation of Contractor under this license.

16. PRESENCE ON FPC PREMISES

- 16.1 Contractor agrees that it will ensure that all of its employees, subcontractors and agents whose duties bring them upon FPC's premises will obey the rules and regulations that are established by FPC and will comply with reasonable directions FPC's representatives may give to Contractor.
- 16.2 Contractor is responsible for acts of its employees, subcontractors and agents while on FPC's premises. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons and property located on FPC's premises. Contractor is responsible for all damages to persons or property caused by Contractor or any of its employees, subcontractors and agents. Contractor will promptly repair, in accordance with the specifications of FPC, any damage that it, or of its employees, subcontractors and agents, may cause to FPC's premises or equipment. On Contractor's failure to do so, FPC may repair the damage and Contractor will reimburse FPC promptly for any and all reasonable expenses incurred in connection with the repair. At its option, FPC may offset against all amounts due to Contractor any and all reasonable expenses incurred in connection with the repair.
- 16.3 Contractor agrees that, in the event of an accident of any kind, Contractor will immediately notify FPC's Campus Security at 806-886-5047 and FPC's Contact Person at 806-457-4215, and thereafter furnish a full written report of the accident.
- 16.4 Contractor will perform the food services management & operations contemplated in this Agreement without interfering in any way with the activities of FPC's employees, agents or visitors.

17. PREMISES SECURITY

- 17.1 FPC Campus Security has the authority and responsibility to maintain the security of all FPC premises and property. Contractor will cooperate with Campus Security in all matters including the reporting of suspected security violations. Contractor will immediately report any evidence of security breaches to Campus Security at 806-886-5047.
- 17.2 Under no circumstances will keys or access cards in Contractor's possession be used to admit persons, known or unknown, into buildings, rooms, or offices or other facilities on FPC's premises. Anyone requesting admittance must be referred by Contractor to Campus Security at 806-886-5047. Any violation of this provision may be grounds for termination of this Agreement by FPC and it will be grounds for FPC to demand that Contractor's employee(s) who violates this provision not to be allowed to work at FPC.
- 17.3 Keys and access cards – Contractor will be furnished, or given access to, keys and access cards to the food service premises and will be held responsible for their use and misuse. All keys and access cards remain the property of FPC. Contractor will be liable for the cost of any replacement keys and access cards and for the cost of any rekeying or reprogramming of locks necessitated by loss of keys and access cards. FPC keys and access cards will not be taken out of the food service except for keys and access cards necessary for Contractor's supervisory staff to access the space.
- 17.4 In an effort to maintain maximum security in the food service areas, all doors are to be unlocked only while food services management & operations are being performed and must be closed and locked after operations are complete. Lights are to be turned off when Contractor completes operations. At no time will Contractor permit an unattended room in the food service area to remain unlocked or lighted. Contractor and FPC agree that leaving doors unlocked and lights on after completing operations in the food service area could result in the disruption of FPC's business operations and the resulting harm is incapable of being estimated or is difficult to estimate. Therefore, as a reasonable estimate of just compensation for the harm caused by leaving doors unlocked and lights on after completing operations in the food service area, Contractor and FPC agree that, if doors remain unlocked or lights remain on after completing operations in the food service area, then at FPC's option (1) Contractor will pay FPC an amount equal to \$50.00 for each occurrence, or (2) FPC may offset an amount equal to \$50.00 for each occurrence from any amounts otherwise due by FPC to Contractor. Contractor and FPC agree that this remedy is not a penalty, but is a reasonable estimate of just compensation to FPC.

- 18. RESPONSIBILITY FOR TOOLS, MATERIALS, SUPPLIES AND OTHER PERSONAL PROPERTY** - FPC has no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its agents, employees or subcontractors, which may be located or stored on FPC's premises.

19. DEFAULT AND TERMINATION

- 19.1 In the event of a material failure by Contractor to perform in accordance with the terms of this Agreement, FPC may terminate this Agreement at any time upon giving thirty (30) days' advance written notice to Contractor setting forth the nature of Contractor's failure. Contractor will then be given an additional thirty (30) days to rectify what was deemed to be the material failure.
- 19.2 In addition, if at any time an involuntary petition of bankruptcy is filed against Contractor and not dismissed within thirty (30) days, or if Contractor files a voluntary petition in bankruptcy, takes advantage of any insolvency law, or if a receiver or trustee is appointed and the appointment is not vacated within thirty (30) days, FPC has the right to terminate this Agreement upon fifteen (15) days

advance written notice to Contractor, in addition to any other rights of any nature that FPC may have at law or in equity.

- 19.3 FPC may, without cause, terminate this Agreement at any time upon giving thirty (30) days advance written notice to Contractor. Upon termination pursuant to this section, FPC will compensate Contractor is entitled for amount owned for food services management & operations satisfactorily performed prior to termination date. If Contractor is entitled to payment in accordance with this Agreement, FPC is not required to reimburse Contractor for any food services management & operations performed or expenses incurred after the termination date.
- 19.4 FPC is entitled (but not obligated) to cure any default of Contractor and has the right to offset against all amounts due to Contractor any and all reasonable expenses incurred in connection with curative actions.
- 19.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse FPC for all fees paid by FPC to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that FPC did not receive from Contractor prior to termination.
- 19.6 Contractor may terminate this Agreement without cause upon one hundred twenty (120) days written notice to FPC.
- 19.7 Contractor may terminate this Agreement for cause if any breach or nonperformance of a material duty by FPC is not cured within thirty (30) days of written notice of such breach or nonperformance. In circumstances where the breach or nonperformance cannot reasonably be cured within said cure period, the cure period shall be extended to sixty (60) days. Contractor may terminate the Agreement immediately if the cure period lapses without FPC curing the breach or nonperformance.
- 19.8 At the end of the term of this Agreement or any extension or renewal, or on any termination of this Agreement, FPC shall repurchase the food service inventory, or cause a successor contractor to purchase the food service inventory, from Contractor under the same terms as originally purchased by Contractor.
- 20. INDEMNIFICATION - TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY FPC, AND HOLD HARMLESS FPC, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, BOARD OF REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY.**
- 21. CONFIDENTIALITY AND SAFEGUARDING OF FPC RECORDS; PRESS RELEASES; PUBLIC INFORMATION -** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of FPC, or (3) have access to, records or record systems (collectively, "FPC Records"). Among other things, FPC Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"). If FPC Records are subject to FERPA, (1) FPC designates

Contractor as a FPC official with a legitimate educational interest in FPC Records, and (2) Contractor acknowledges that its improper disclosure or re-disclosure of personally identifiable information from FPC Records will result in Contractor's exclusion from eligibility to contract with FPC for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold FPC Records in strict confidence and will not use or disclose FPC Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by FPC in writing; (2) safeguard FPC Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that FPC Records are safeguarded and the confidentiality of FPC Records is maintained in accordance with all Applicable Laws, including FERPA and any applicable provisions of the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with FPC's rules, policies, and procedures regarding access to and use of FPC's computer systems. At the request of FPC, Contractor agrees to provide FPC with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of FPC Records.

- 21.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any FPC Records occurs, Contractor will provide written notice to FPC within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide FPC with all information requested by FPC regarding the impermissible use or disclosure.
- 21.2 **Return of FPC Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all FPC Records created or received from or on behalf of FPC will be (1) returned to FPC, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any FPC Records, Contractor will provide FPC with written notice of Contractor's intent to destroy FPC Records. Within five (5) days after destruction, Contractor will confirm to FPC in writing the destruction of FPC Records. Any such destruction will be done in compliance with the requirements of ITEPA or the Gramm-Leach Bliley Act.
- 21.3 **Disclosure.** If Contractor discloses any FPC Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- 21.4 **Press Releases.** Except when defined as part of the services, Contractor will not make any press releases, public statements, or advertisement referring to the services or the engagement of Contractor as an independent contractor of FPC in connection with the services or release any information relative to the services for publication, advertisement or any other purpose without the prior written approval of FPC.
- 21.5 **Public Information.** FPC strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*.
- 21.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if FPC reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, FPC may immediately terminate this Agreement without notice or opportunity to cure. Contractor agrees that its violation of these confidentiality provisions entitles FPC to injunctive relief without the necessity of posting a bond, in order to prevent or remedy the breach.

- 21.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 21.8 **Indemnity.** To the extent Contractor, its employees, agents, or representatives violate these confidentiality provisions, or cause FPC or its employees', students' or board members' confidential or non-public information to be compromised, Contractor agrees to defend (with FPC choosing defense counsel), hold harmless and indemnify FPC, its board, employees, agents and representatives, for any and all damages, claims, fines, causes of action, lawsuits, attorneys' fees, costs, injuries or liabilities related to or arising from same violation.
22. **COMPLIANCE WITH LAW** - Contractor is aware of, fully informed about and in full compliance with its obligations under with all applicable, federal, state and local, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction ("**Applicable Laws**"), including Title VI of the *Civil Rights Act of 1964*, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), *Vietnam Era Veterans Readjustment Act of 1974*, as amended (41 CFR 60-250), *Rehabilitation Act of 1973*, as amended (41 CFR 60-741), *Age Discrimination Act of 1975* (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), *Fair Labor Standards Act of 1938*, Sections 6, 7, and 12, as amended, *Immigration Reform and Control Act of 1986*, Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 95-507), *Americans with Disabilities Act of 1990* (42 USC 12101 et seq.), *Civil Rights Act of 1991*, *Occupational Safety and Health Act of 1970*, as amended (PL 91-596), *Immigration and Nationality Act (8 United States Code 1324a)* and all other applicable laws. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, nor anyone acting for that firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to FPC's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
23. **UNDOCUMENTED WORKERS** - The *Immigration and Nationality Act (8 United States Code 1324a)* ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act, then in addition to other remedies or penalties prescribed by Applicable Laws, FPC may terminate this Agreement in accordance with **Section 21** of this Agreement. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
24. **EQUAL OPPORTUNITY** - Pursuant to Applicable Laws, Contractor represents and warrants that it is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, or sex.
25. **TAXES** - Contractor will pay when due all taxes or assessments applicable to Contractor. Contractor will comply with the provisions of all Applicable Laws related to taxes and taxing authority.

26. **CONTRACTOR CONFLICT** - Contractor agrees that it will not at any time prior to or during the term of this Agreement, either directly or indirectly, use labor or materials that could or will create any difficulty with other contractors or labor engaged by Contractor or FPC or with any other party in the construction, maintenance or operation of FPC or any part thereof.
27. **ASSIGNMENT AND SUBCONTRACTING** - This Agreement is a personal service contract for the services of Contractor. The Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third-party, in whole or in part, and any attempt to do so will (a) not be binding on FPC; and (b) be a breach of this Agreement. The benefits and burdens of this Agreement are assignable by FPC.
28. **DAMAGES** - Contractor shall be liable for the loss of or damages to FPC's property when such loss or damage arises from the negligent or unlawful acts or omissions of Contractor or its employees. The Contractor is responsible for reporting, in writing within seventy-two (72) hours of the occurrence, damage to FPC property or personal property on FPC premises. Failure to make report to FPC of the occurrence, within the specified time, may be cause for termination of this contract.
29. **CHANGES TO THE AGREEMENT** - This agreement may not be modified, waived or amended unless mutually agreed to in writing by the persons who executed this Agreement or their replacements or designees.
30. **REPRESENTATIONS AND WARRANTIES BY CONTRACTOR** - Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
31. **LIABILITY OF CONTRACTOR** - Contractor understands, agrees and expressly warrants that all Work performed under this Agreement shall be the sole responsibility of Contractor and Contractor shall be solely liable for all such Work or services performed hereunder. It is further understood and agreed that FPC shall not, under any circumstances, bear any responsibility or liability for the Work or services performed hereunder.
32. **FRANCHISE TAX CERTIFICATION** - If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("**Chapter 171**"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
33. **INCLEMENT WEATHER CLOSINGS** - Because FPC can have up to 250 students living on campus, unless specifically requested by the FPC Contact Person, Contractor's employees may be required to work on days that FPC closes due to inclement weather. Contractor must work closely with FPC's Contact Person in deciding appropriateness of scheduled work hours for Contractor's employees due to weather conditions.
34. **LOSS OF FUNDING** - Performance by FPC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and allocation of funds by FPC. If the Legislature fails to appropriate or allot the necessary funds, or FPC fails to allocate the necessary funds, then FPC will issue written notice to Contractor and FPC may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of FPC.

35. **LIMITATIONS** - THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF FPC TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON FPC'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; ON; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "**LIMITATIONS**"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON FPC EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
36. **ENTIRE AGREEMENT; MODIFICATIONS** - This Agreement supersedes all prior agreements, if any, written or oral, between Contractor and FPC and will constitute the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by FPC and Contractor.
37. **CAPTIONS** - The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
38. **VENUE; GOVERNING LAW** – Hutchinson County, Borger, Texas, will be the proper place of venue for suit on or in respect to this Agreement. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
39. **WAIVERS** - No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
40. **BINDING EFFECT** - This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
41. **APPOINTMENT** - FPC hereby expressly reserves the right from time to time to designate by notice to Contractor a representative to act partially or wholly for FPC in connection with the performance of FPC's obligations hereunder. Contractor will act only upon instructions from that representative unless otherwise specifically notified to the contrary.
42. **RECORDS** - Contractor agrees that FPC, or any of its duly authorized representatives, at any time during the term of this Agreement, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of Contractor (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Contractor's charges incurred in its performance under this Agreement. Such records will be kept by Contractor for a period of four (4) years after Final Payment under this Agreement. Contractor agrees to refund to FPC any overpayments disclosed by any audits.
43. **NOTICES** - Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery

to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

To FPC: **Frank Phillips College**
Attn: VP of Administrative Services/CFO
1301 W Roosevelt St
Borger, Texas 79007
806-457-4215

If to Contractor: _____

Attention: _____

or to another person or address as may be given in writing by either party to the other in accordance with this section.

44. CAPTIONS - The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

45. SEVERABILITY - In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

46. BREACH OF CONTRACT CLAIMS

46.1 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by FPC and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

46.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in Subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by Subchapter B of Chapter 2260, to FPC in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of Subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that FPC allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with Subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under Subchapter C of Chapter 2260. The VP of Administrative Services / CFO of FPC, or the other officer of FPC as may be designated from time to time by FPC by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

46.1.2 If the parties are unable to resolve their disputes under Section 49.1.1, the contested case process provided in Subchapter C of Chapter 2260 is Contractor's sole and exclusive

process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by FPC.

46.1.3 Compliance with the contested case process provided in Subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by FPC nor any other conduct, action, or inaction of any representative of FPC relating to this Agreement constitutes or is intended to constitute a waiver of FPC's or the state's sovereign immunity to suit and (ii) FPC has not waived its right to seek redress in the courts.

46.2 The submission, processing, and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted, or subsequently amended.

46.3 FPC and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

47. ASSIGNMENT OF OVERCHARGE CLAIMS - Contractor hereby assigns to FPC any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, *Texas Business and Commerce Code*, Sections 15.01, et seq.

48. ETHICS MATTERS; NO FINANCIAL INTEREST - Contractor and its employees, agents, representatives, and subcontractors have read and understand FPC's Conflicts of Interest Policy available at <https://pol.tasb.org/PolicyOnline/PolicyDetails?key=702&code=CFE#legalTabContent>. Neither Contractor nor its employees, agents, representatives, or subcontractors will assist or cause FPC employees to violate FPC's Conflicts of Interest Policy, provisions described by FPC's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board of Regents has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

49. CERTIFICATIONS OF NONSEGREGATED FACILITIES AND EQUAL EMPLOYMENT OPPORTUNITIES COMPLIANCE - Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms, each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause. The term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES – A Certification on Nonsegregated Facilities must be submitted prior to the

award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

50. **DEBARMENT** - Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government Procurement or Nonprocurement Programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to FPC if at any time prior to award Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when FPC executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to FPC, FPC may terminate this Agreement for default by Contractor.
51. **OFFICE OF INSPECTOR GENERAL CERTIFICATION** - Contractor acknowledges that FPC is prohibited by Federal regulations from allowing any employee, subcontractor, or agent of Contractor to work on site at FPC's premises or facilities if that individual is not eligible to work on Federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at FPC's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time the employees, subcontractors and agents are assigned to work on site at FPC's premises or facilities. Contractor acknowledges that FPC will require immediate removal of any employee, subcontractor or agent of Contractor assigned to work at FPC's premises or facilities if the employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp
52. **ACCESS TO DOCUMENTS** - To the extent applicable to this Agreement, in accordance with Section 1861(v)(1)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor agrees to allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.
53. **NO SMOKING OR VAPING POLICY** – FPC provides a friendly, smoke-free vapor-free environment at all of its campuses and satellite facilities. Contractor agrees to fully comply with FPC's no smoking policy and to ensure compliance of same by all employees of Contractor or anyone else performing under this Agreement on its behalf.

- 54. **FORCE MAJEURE** – The performance of either party’s obligations will be suspended to the extent and for the length of time that the party is prevented from performing due to acts of nature, fires, governmental actions, changes in the Service requirements which directly contribute to a delay, or other events beyond its reasonable control. In the event of any occurrence that a party considers to be the cause of a delay or failure of performance, the party affected shall promptly notify the other party.

- 55. **COLLEGIATE LICENSING** – Contractor will be required to register with FPC’s approved Collegiate-licensing vendor.

- 56. **EXCLUSIVE RIGHTS** – Contractor shall continue to have the exclusive right, free from any alternate source endorsed, licensed or otherwise approved or supposed by FPC (whether on campus, by catalog or through electronic commerce, including hyperlinks to alternate sources) to provide food services for the College and services traditionally offered through college and university food services. This does not prohibit occasional sales by approved student groups or approved student government organizations that do not material impact food service sales. Contractor will continue to support student groups and student government organizations interested in holding special sales as long as their sales do not materially impact food service sales. This does not include campus snack or drink vending services.

- 57. **INVENTORY AND PROPERTY LOSS** – Contractor will maintain responsibility for inventories and other properties damaged or lost while providing the food service operation and management or in transit to and from locations on campus. Contractor will continue to assume responsibility for the loss of monies, checks and credit card collections, as well as inventory theft and robbery.

- 58. **FRANCHISES** – FPC or a third-party vendor of FPC’s choosing shall be the right to secure (on its own and without any assistance required from Contractor) its own agreement with any franchise-brand operated on the FPC campus (i.e. Starbucks, Chick-fil-A, Subway, etc.), under the following scenarios:
 - (a) if the Agreement is terminated prior to its expiration; or
 - (b) at the end of the Agreement.

- 59. **EXHIBITS** – Exhibits TBD are attached hereto and are incorporated herein by reference for all purposes as part of this Agreement.

IN WITNESS WHEREOF, duly authorized representatives of FPC and Contractor have executed and delivered this Agreement effective as of the Effective Date.

OWNER:

FRANK PHILLIPS COLLEGE

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

TBD

By: _____

Name: _____

Title: _____

Date: _____

Contract Review: _____

EXHIBITS - TBD