

ATTACHMENT C
DINING AND NUTRITION MANAGEMENT SERVICES RFP

CONTRACT TERMS AND CONDITIONS

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C.1 COLLEGE SECURITY PROVISIONS

All security requirements established by the College for its facilities shall become a part of these specifications, and it shall be the vendor's responsibility to comply with these security provisions. Refer to Exhibit II – Security and Maintenance Requirements.

C.2 COLLEGE POLICIES, RULES AND REGULATIONS

The Contractor agrees to abide by all college policies, rules and regulations in effect for all St. Mary's College of Maryland employees while working on the campus and/or dealing with any students off the campus in furtherance of the Contractor's obligations under this contract.

C.3 PRE-EXISTING REGULATIONS

The regulations set forth in SMCM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

C.4 EMPLOYEE CONDUCT

Contractor is responsible for all of its employees and their actions while on the campus and the college reserves the right to remove from the premises any employee of the Contractor who in any way acts in a manner which is considered unacceptable by the College.

C.5 ETHICS

This Contract is cancellable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any College employee or official in connection with this procurement.

C.6 RETENTION OF RECORDS

Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by the College hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State of Maryland, including the procurement officer or designee, at all reasonable times.

C.7 DISSEMINATION OF INFORMATION

Contractor may not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the College. Contractor shall indemnify the State and the College, their officials, agents and employees, from any liability that may be incurred by reason of dissemination, publication, distribution or circulation, of any information or materials pertaining to this Contract by Contractor, its agents or employees.

C.8 RESPONSIBILITY OF CONTRACTOR

Contractor shall perform the services with that standard of care, skill and diligence normally provided by a contractor in the performance of similar services. If Contractor fails to perform the services, and such failure is made known to Contractor within two years after expiration of this Agreement, it shall, if

required by The College, perform at its own expense and without additional cost to the College, those services necessary for the Correction of any deficiencies or damage resulting from Contractor's failure under this obligation, in addition to and not in substitution for any other remedy available to the College.

C.9 NON-EXCLUSIVE CONTRACT AND NO ASSURANCES OF WORK

The parties acknowledge and agree that this Contract is not exclusive and that the College may purchase the same or similar goods and services from other vendors. Further, the Contractor acknowledges that it has received no assurances of any minimum amount or type of work or any minimum amount of compensation under this Contract.

C.10 BANKRUPTCY

Upon the filing of any bankruptcy proceeding by or against Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, Contractor must notify the College immediately. Upon learning of the actions herein identified, the College reserves the right at its sole discretion either to cancel the contract or to affirm the contract, and to hold contractor responsible for damages.

C.11 SUBCONTRACTING, ASSIGNMENT

Contractor may not, during the term of this Agreement or any renewals or extensions of the Agreement, assign or subcontract all or any part of the Agreement without the prior written approval of the Procurement Officer. Any approved subcontract or assignment is subject to all terms and conditions that the State deems necessary. The College is not responsible for Contractor's obligations to its subcontractors.

C.12 LICENSES AND REGISTRATION

The Contractor must be licensed as required by the laws of the State of Maryland as applicable to the performance of work under this Contract.

C.13 COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- .1** It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- .2** It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- .3** It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- .4** IT shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

C.14 CONTINGENT FEE PROHIBITION

The Contractor, architect or engineer (as applicable), warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

C.15 NON-DISCRIMINATION IN EMPLOYMENT

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

C.16 COMMERCIAL NON-DISCRIMINATION CLAUSE

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination.

Contractor shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by

the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

C.17 AFFIRMATIVE ACTION NOTICE

The College is committed to the principles of equal employment opportunity. As a covered educational institution bound by Executive Order 11246; the Vietnam Era Veterans Readjustment Assistance Act of 1974; and Section 503 of the Rehabilitation Act of 1973, as amended, the College maintains an affirmative action plan and hereby states as its Policy of Affirmative Action the following:

- It will be the policy of the college to recruit, hire, train and promote persons in all job titles without regard to sex, gender identity, sexual orientation, race, color, religious creed, national origin, ethnicity, physical or mental disability, protected veteran status, or any other characteristic protected by law.
- All employment decisions shall be consistent with the principle of equal employment opportunity, and only job-related qualifications will be required.
- All terms and conditions of employment will be administered without regard to an individual's sex, gender identity, sexual orientation, race, color, religious creed, national origin, ethnicity, physical or mental disability, protected veteran status, or any other characteristic protected by applicable law.

For employee placement firms: We request that you refer to the College all qualified candidates, including w3omen, individuals of color, protected veterans, and individuals with disabilities.

C.18 NON-HIRING OF OFFICIALS AND EMPLOYEES

No official or employee of the State of Maryland as defined under State Government General Provisions Article, §13-2215-101, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, during the pendency and/or term of this contract and while serving as an official or employee of the State, become or be an employee of contractor or any entity that is a subcontractor on this contract.

C.19 DRUG FREE AND ALCOHOL-FREE WORKPLACE

The contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol-Free Workplace and that the Contractor shall remain in compliance throughout the term of the Contract.

C.20 CORPORATE REGISTRATION

Pursuant to 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, MD 21201, before doing

any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

C.21 FINANCIAL DISCLOSURE

Contractor shall comply with the State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State and receive in the aggregate \$200,000 or more during a calendar year, shall within 30 days of the time when the \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

C.22 POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

C.23 FEDERAL LOBBYING PROHIBITION

In accordance with 31 U.S. C. § 1352, The College and Contractor, and any subcontractors are prohibited from using any federal funds for the purpose of lobbying Congress or any federal agency in connection with the awarding of a particular contract, grant, cooperative agreement, or loan. Any recipient of federal funds that received over \$100,000 in federal monies must also file a "Disclosure of Lobby Activities" from (Federal Form SF LLL). Contractor hereby specifically agrees to abide by all applicable requirements of 31 U.S.C. § 1352.

C.24 COMPLIANCE WITH ADA

Contractor shall comply with the Americans with Disabilities Act (ADA), 42, U.S.C. § § 12101 et seq. and applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Agreement conform to the ADA. Contractor shall indemnify the State in any action brought pursuant to the ADA for all damages, attorney fees, litigation expenses, and costs, if such action or proceeding arises from the acts of Contractor, or of Contractor's employees, agents, or subcontractors.

C.25 LICENSES, REGISTRATION AND QUALIFICATIONS

All work performed by the Contractor shall conform to all State and local codes and ordinances and such other statutory provisions that pertain to this class of work. Such codes, rules, regulations and local ordinances are to be considered part of these specifications. The College reserves the right to require that the Contractor demonstrate that it has the skills, equipment and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project. The College has the option of requiring all personnel working on this contract to have copies of their license/registration forms on file with the Purchasing Agent at the college.

C.26 ANTI-BRIBERY

The Contractor warrants that neither it nor any of its officers, directors or partners, nor any employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the federal government.

C.27 ARREARAGES

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

C.28 QUALIFICATIONS TO DO BUSINESS IN THE STATE OF MARYLAND

Any out of state entity not already registered with the Maryland State Department of Assessments and Taxation to do business in Maryland shall be required to do so prior to entering into a contract with the College.

C.29 FIXED OR UNIFORM PRICE

The Bidder affirms that it has not been a party to any agreement to bid a fixed or uniform price.

C.30 EPA COMPLIANCE

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Act of 1972, where applicable.

C.31 OCCUPATIONAL SAFETY AND HEALTH ACT (O.S.H.A.)

All materials, supplies, equipment or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

C.32 INDEMNIFICATION

.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and, if requested, defend the State of Maryland and St. Mary's College of Maryland and their trustees, officers, employees, representatives, and agents, from any and all claims, costs, damages, expenses,

liability, losses, judgments, and causes of actions (including attorney's fees, settlements made in good faith and arbitration awards) which arise out of or result from the performance of this Contract, including any acts or omissions of the Contractor, its officers, employees, subcontractors, or agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnification which would otherwise exist as to any party or person.

.2 The College is not liable in any action of tort, contract, or otherwise for any actions of Contractor arising out of this Agreement. The college shall not assume any obligation to defend, indemnify, hold harmless, or pay any attorneys' fees, claims, costs, expenses, judgments, or settlements that may arise from or in any way be associated with the performance or operation of this Contract.

.3 The Contractor shall immediately notify the Procurement Officer by phone and in writing of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's performance of work under the Contract. The Contractor shall cooperate, assist, and consult with the College in the defense or investigation of any claim, suit, or action made or filed against the College as a result of or relating to the Contractor's performance under this Contract.

C.33 DISPUTES

.1 Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this Disputes clause and in accordance with SMCN Procurement Policies and Procedures, Section 8, "Protest and Appeals."

.2 As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

.3 Prior to filing a contract claim, the contractor shall contact the Procurement Officer and attempt, in good faith, to resolve by mutual agreement any disputes or disagreements that arise in connection with the Contract. When a dispute cannot be resolved by mutual agreement, the contractor shall submit a written contract claim to the Procurement Officer for a decision, made in consultation with the Office of the Attorney General. The claim shall be filed with the Procurement Officer within thirty (30) days of when the basis of the claim was known or should have been known, whichever is earlier.

.4 The Procurement Officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal as provided by SMCN Procurement Policies and Procedures, Section 8, "Protest and Claims" within 30 days of receipt of the decision.

.5 Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the Procurement Officer's decision.

C.34 TERMINATION FOR DEFAULT

If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates and provision of the contract, the College may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the college's option, become the College's property. The College shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the contractor will remain liable after termination and the college can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11(B)

C.35 TERMINATION FOR CONVENIENCE

The performance of work under this contract may be terminated by the College in accordance with this clause in whole, or from time to time in part, whenever the College shall determine that such termination is in the best interest of the College. The College will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

C.36 SET-OFF

The State may deduct from and set off against any amounts due and payable to Contractor any back-charges, penalties, or damages sustained by the State, by virtue of any breach of this Contract by Contractor or as otherwise permitted by law. Nothing herein shall be construed to relieve Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

C.37 BID/PROPOSAL AFFIDAVIT BY CONTRACTOR

All terms and conditions of the Bid/Proposal Affidavit, attached as [Attachment-A.-Bid-Proposal-Affidavit.pdf](#), are made a part of this contract.

C.38 REPRESENTATION

Each party to this agreement represents and warrants to the other that it has full right, power, and authority to execute this Contract.

C.39 MARYLAND LAW PREVAILS

The provisions of this contract shall be governed by the laws of Maryland.

C.40 FIXED OR UNIFORM PRICE

The Bidder affirms that it has not been a party to any agreement to bid a fixed or uniform price.

C.41 ENTIRE AGREEMENT

This Agreement, together with the Attachments and other documents incorporated by reference, represents the complete and final understanding of the parties. No other understanding, oral or written, regarding the subject matter of this Agreement, may be deemed to exist or to bind the parties at the time of execution.

(End of Section F)