



**REQUEST FOR PROPOSALS (RFP) 2022-02
ON-CALL CATERING AND CAFÉ SERVICE**

**Proposals Due Date: September 20, 2021
Pre-Submittal Conference: September 9, 2021**

**BRENDA GACHUZ, DIRECTOR
PURCHASING DEPARTMENT
TWIN PEAKS CENTER
13626 TWIN PEAKS ROAD
POWAY, CALIFORNIA 92064**

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EXHIBITS:

- A – SCOPE OF SERVICES
- B – DESCRIPTION/DEPICTION OF CAFÉ FACILITIES
- C – SAMPLE AGREEMENT

NOTICE TO PROPOSERS

NOTICE IS HEREBY GIVEN that the Poway Unified School District, acting by and through its Governing Board, hereinafter referred to as the “District”, will receive up to, but not later than **2:00 P.M. September 20, 2021** sealed Proposals for the award of a contract for:

ON-CALL CATERING AND CAFÉ SERVICE

Such proposals shall be received in the Purchasing Department, Poway Unified School District, 13626 Twin Peaks Road, Poway, CA 92064.

Any Proposal received after the stated date and time will not be considered. Proposals submitted and participation by interested Proposers shall be at no cost or obligation to the District.

Each Proposal must conform and be responsive to this invitation, the Information for Proposers, the Specifications, and all other documents comprising the pertinent RFP documents. There is a Pre-RFP Conference on **September 9, 2021 at 10:00 AM**, held via Zoom. Zoom meeting details will be provided to interested parties via email. Please email mcrivello@powayusd.com by 4:00 PM on September 7, 2021 to request Zoom meeting log-in.

The District reserves the right to reject any or all proposals, to accept or to reject any one or more items on a proposal, or to waive any irregularities or informalities in the proposal or in the proposal process. The District may award a contract according to the State of California Education Code Section, 20118.2.

No Proposer may withdraw its Proposal for a period of sixty (60) days after the date set for the opening of Proposals.

Dated this 30th day of August, 2021

Dr. Darshana Patel

Dr, Darshana Patel
Clerk, Board of Education
Poway Unified School District
San Diego County, California

Publication: Daily Transcript

INFORMATION FOR PROPOSERS

- 1. INTRODUCTION:** The POWAY UNIFIED SCHOOL DISTRICT ("District") is seeking proposals and concepts from professional food catering and cafe service providers qualified to provide On-Call Catering/Cafe Services ("Caterer") to the District.

Caterers are encouraged to view a more detailed description of the anticipated duties in the Scope of Services described in Exhibit "A," attached hereto.

This Request for Proposals ("RFP") describes the required Scope of Services, the selection process, and the minimum information that must be included in the proposal. This RFP will request each Proposer to state their qualifications and their concept for how the Caterer and District will develop a constructive and effective partnership.

- 2. BACKGROUND AND DESCRIPTION:** The District's administrative offices are located at 15250 Avenue of Science, San Diego, CA 92128 ("District Office"). The District Office consists of a two-story building approximately 55,342 square feet in size, which houses the Superintendent's office, governing board meeting room and approximately 210 District employees. Within the District Office, there is also a full kitchen and seating area commonly referred to as the Café, which consists of approximately 2,012 (including the kitchen) square feet as further described and depicted in Exhibit "B." Currently, the District conducts governing board meetings, administrative meetings, student and staff activities as well as other special events at the District Office. Many of these meetings and/or events require food service on a pre-planned and/or on-call basis as needed to accommodate such activities.

Accordingly, the District is seeking a Caterer to come into the District Office and provide catering services to such District events. The District would also like the Caterer to provide meal services (i.e sandwich, soup, salads, etc.) for District employees from the Café from the hours of 7:00 AM to 2:30 PM, Monday-Friday in the Café. To accomplish these catering services, the District is further willing to provide the Caterer a license to use the Café to provide the meal services to not only District employees, but also third parties/members of the public, using the existing Café space, equipment and seating area. In addition to all of the above, the District would also be willing to permit the Caterer to use the Café for the preparation of food to be catered to third parties from the hours of 6:00 AM to 4:00 PM, Monday-Friday. However the District would reserve the right to use the Café area if needed for District purposes upon reasonable notice to the Caterer.

3. PROJECT DESCRIPTION:

- A. Project Background/Description: The Caterer's services shall consist of the specific on-call and meal preparation services set forth in Exhibit "A," collectively referred to as the Project. At all times, the Caterer shall work as an independent contractor working in consultation with District staff as further described in the final agreed upon scope of services. The District seeks proposals for an agreement term of at least one (1) year but up to five (5) years as will be determined by the District, in its sole discretion, after review of the proposals.
- B. Fees and Charges. Caterers are required to describe in the proposal the anticipated price ranges for all fees and charges for the various Services set forth in Exhibit "A." Price ranges shall, indicate any variations based on the length of the term of the Agreement and shall include at least the following categories:
1. Proposed Rates/Charges for on-call meals to the District and proposed discount for District employee purchases from Café; and
 2. Proposed Monthly License Fee for use of Café; and
 3. Proposed Revenue Sharing for any direct sales from Café to third parties and/or use of the Café to provide catering/food service to third parties.

- 4. SCOPE OF SERVICES:** Although the final scope of work shall be negotiated in the final executed contract documents, the Caterer will be expected to fulfill, at a minimum, the services described in the Scope of Services attached hereto as Exhibit "A".

A copy of the draft District form of agreement for the On-Call Catering Services is attached hereto as Exhibit "C."

- 5. RFP PROCESS TIMELINE:** The following is the estimated timeline for Proposal submittals and the Proposal evaluation and selection process ("RFP Schedule"):

Action	Date
Release of Request for Proposals	August 30, 2021
Pre-Proposal Meeting: VIA ZOOM – 10:00:00 PST AM	September 9, 2021
Last Day to Submit Questions for Clarification on or before 3:00 PM	September 15, 2021
Final Responses/Addendum Issued by District by 3:30 PM	September 17, 2021
Deadline for Receipt of Proposals submitted on or before 2:00PM	September 20, 2021
Interview of Finalist(s)(as applicable) Week of	September 27, 2021
Anticipated Award for the Project	October 14, 2021

The District reserves the right, at any time, to adjust in the form of additions, modifications or deletions to the RFP Schedule. Such adjustments, if any, shall be made by RFP Addendum. References in the RFP Documents to the RFP Schedule or to date in the RFP Schedule shall mean the RFP Schedule as so adjusted.

- 6. PERIOD OF CONTRACT:** October 15, 2021 – June 30, 2022

- 7. COMPOSITION OF THE PROPOSAL DOCUMENTS:** The Proposal is set up in a eleven (**10**) part sequence comprised of the following:

- A. Notice to Proposers
- B. Information for Proposers
- C. Sample Services Agreement
- D. RFP Instructions, Terms and Conditions
- E. RFP Form
- F. Proposal Requirements
- G. References
- H. Non-Collusion Declaration
- I. Workers' Compensation Certification
- J. Non-Discrimination Statement

All parts will become a binding part of the contract awarded to the successful Proposer. A Services Agreement containing the provisions specified in Part C will be negotiated and executed by the District and the successful proposer. Proposers shall submit a sample of the Services Agreement intended for use with the District for the implementation of this RFP. District, in its sole discretion, may elect to use the Proposer's sample agreement, subject to negotiation of the terms thereof, or provide its own contract. The District reserves the right to modify its needs or the scope of any proposed contract subsequent to the review of Proposals, and to include such modifications in any contract negotiated with the successful Proposer.

- 8. DOCUMENTS TO BE INCLUDED IN THE PROPOSAL SUBMITTAL PACKAGE:** Three (3) hard copies and one (1) electronic copy via a USB drive of the proposals must be submitted. Proposal submittals must include the following items, completely filled out and signed by authorized signatory personnel of the Proposer's company, in order to be considered a responsive proposal:

- A. RFP Form
- B. Proposal Requirements
- C. References
- D. Non-Collusion Declaration
- E. Workers' Compensation Certification
- F. Non-Discrimination Statement

9. INFORMATION AND GUIDELINES:

1. DISTRICT CONTACT PERSON

Brenda Gachuz, Purchasing Director
Poway Unified School District
13626 Twin Peak Road
Poway, CA 92064
Email: bgachuz@powayusd.com

2. ACCESS TO RFP ADDENDA

Addendum duly issued by the Purchasing Department of the District will be published at the District's website at <https://www.powayusd.com/en-US/Departments/Business-Support/Purchasing/Purchasing-Bids>. The Poway Unified School District will not be responsible for any other explanation or interpretation of the proposed documents. Proposers are responsible for checking with the District for clarifications and/or addenda.

Failure to obtain addenda shall not relieve Respondent from being bound by any additional terms and conditions in the clarifications and/or addenda, or from considering additional information contained therein in preparing your Proposal.

Note: There may be multiple addenda. Any harm to the Respondent resulting from failure to obtain all addenda shall not be valid grounds for a protest against award(s) made under this solicitation.

All Respondents are responsible for obtaining all RFP materials.

3. INTERESTED PARTIES

Firms who are advisors to the District in respect to the RFP process are not allowed to submit, or participate in submission of, Proposals. A Proposer shall not participate in, or be "interested in," more than one Proposal. For purposes of this paragraph, "interested in" means having a managerial or financial interest in another Proposer or a Subcontractor to another Proposer. Notwithstanding the foregoing, a Subcontractor may be proposed as a subcontractor to more than one Proposer.

4. PROPOSER CLARIFICATIONS

Without limitation to the District's rights relating to the conduct and content of Negotiations, the District reserves the right but assumes no obligation, at any point in the RFP process, to contact a Proposer directly, without notice to other Proposers, for purpose of obtaining clarifications of, or to address minor irregularities, informalities, or apparent clerical mistakes in, a Proposal ("Proposer Clarifications"). Where the District determines that there is a need and justification for seeking Proposer Clarifications, the District may request Proposer Clarifications from some Proposers and not other Proposers. If Proposer Clarifications are sought from all Proposers, the questions asked may be different for each Proposer.

5. FALSE INFORMATION

In addition to and without limitation upon any other requirements of the RFP Documents, the District reserves the right, but assumes no obligation, to disqualify any Proposer and reject any Proposal should District determine that any information submitted by the Proposer is false, incorrect, or materially incomplete.

6. DISTRICT CONFIRMATION

The District reserves the right, but assumes no obligation, to confirm through any means available to the District the truth, accuracy, or completeness of any information contained within the resumes or other information submitted by a Proposer or communicated by a Proposer during face-to-face communications with the District or its representatives or consultants administering the RFP process.

7. NO JOINT OFFERS ACCEPTED

Where two or more Proposers desire to submit a single Proposal in response to this RFP, they should do so on a prime basis rather than as a joint venture or informal team. For this engagement, District intends to contract with an individual firm and not with multiple firms doing business as a joint venture. Accordingly, where two or more firms desire to join in preparing and submitting Proposals, they should do so on a prime basis, rather than as a joint venture or informal team. The firm acting as the "prime", if it receives the Award, will enter into the Services Agreement with the District.

8. DISTRICT DETERMINATIONS

The District shall have the right to make all determinations and interpretations relating to the RFP Documents or the RFP process, including, without limitation, any Proposer's compliance with the RFP Documents or its qualifications to participate in the RFP process, and all such determinations shall be final and binding.

10. PROPOSER'S CERTIFICATION REGARDING WORKER'S COMPENSATION: In accordance with the provisions of Section 3700 of California Labor Code, the awarded Proposer shall secure the payment on compensation to his/her employees. The awarded Proposer shall sign and file with the District the following certificate prior to performing the work under this contract: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." The form of such certificate is included as a part of the Proposal documents. Each Proposer shall sign the certificate and submit it with his/her sealed proposal.

11. NON-DISCRIMINATION STATEMENT: Proposers are required to complete the "Non-Discrimination Statement" Form as part of their Proposal submittal.

12. PROPOSAL SUBMISSION: The proposer shall submit to the District **Three (3) hard copies and One (1) digital copy on a USB drive, addressing each of the items in this RFP and must be received by the District no later than 2:00 p.m. PST, on March 29, 2021.** Proposals must be signed and shall become property of the District. Proposals shall be submitted in a sealed package displaying the proposer's name and the words: **"Proposal Responding to: RFP 2022-02: ON-CALL CATERING AND CAFE SERVICE"**

Mail or deliver proposals to:
Poway Unified School District
Purchasing Department
13626 Twin Peak Road
Poway, CA 92064

Proposals received after the time and date above may, at the sole discretion of the District, be returned unopened or set aside without consideration.

Delivery of the proposal by the specified deadline is the sole responsibility of the Proposer to ensure that its proposal is delivered on time. If hand delivered, ample time should be scheduled for delays caused by traffic and parking. District does not guarantee parking accommodations to proposers submitting proposals. The District shall not be responsible for, nor accept as a valid excuse for late proposal receipt, any delay in mail service or other method of delivery used by the Proposer except where it can be established that the District was the sole cause of the late receipt.

Proposals submitted via fax, telephone or email will not be accepted.

All proposals must be firm offers subject to acceptance by District and may not be withdrawn for a period of sixty (60) calendar days following the Proposal Submission Deadline. Proposals may not be amended once submitted to District, except as permitted by District.

13. METHOD OF PROPOSAL EVALUATION AND CONTRACT AWARD: The District may award a contract according to

IMPORTANT: The Proposer must supply all items included in its Proposal. Refer to “RFP Instructions, Terms & Conditions” Section following for further explanation.

During the evaluation process the District may require supplemental information in order to fairly evaluate a proposal. For this purpose, the District may request such information from the Proposer after the initial submittal. If such information is required, the Proposer will be notified and will be permitted three days to submit the information.

The District will proceed to evaluate all submitted Proposals as follows:

- Responsiveness to RFP
All proposals shall be reviewed to verify that the Proposer has met the minimum requirements of the RFP. Proposers are encouraged to follow the format of the RFP in order to facilitate District review.
- Evaluation and Award of Contract
 1. The District intends to select Catering Entities that best evidence the demonstrated competence and professional qualifications necessary to perform the described Catering services.
 - i. A review and selection committee will review and evaluate all submittals received by the District, and a Proposer may be requested to clarify the contents of its proposal. Each proposal shall be evaluated according to the criteria listed below:
 - ii. Conformance to the specified RFQ/RFP format.
 - iii. Organization, presentation, and content of the submittal.
 - iv. Firm's specialized experience and technical competence considering the types of service required, record of performance, and the strength of the key personnel who will be dedicated to the Project.
 - v. Proposed methods and overall strategic plan to accomplish the Services in a timely and competent manner.
 - vi. Knowledge and understanding of the local environment and the District.
 - vii. Firm's financial resources and stability.
 - viii. Firm's ability to meet the insurance requirements, unless the District elects to provide Project insurance.
 - ix. Proven track record of experience.
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 3. The District reserves the right to reject all proposals, select Catering Entities by proposal review only, or interview Proposers as needed. The District shall not be required to interview each and every Proposer. Certain Catering Entities may be selected to make a brief presentation and oral interview after which final selections will be made.
 4. Each Caterer will be selected on the basis of information provided in the proposal, in-person presentations, and/or the results of the District's research and investigation.

RFP Instructions, Terms, and Conditions

This RFP contains the instructions and conditions governing the requirements for a Proposals to be submitted by an interested Proposer, the format in which the Proposals is to be submitted, the material to be included therein, and the requirements that must be met. Each Proposer should carefully examine the entire RFP and be fully aware of the nature and quality of the services sought by District as well as the conditions in providing such services.

1. **RFP PROPOSALS:** Proposals to receive consideration shall be in accordance with the following instructions:
 - a. Proposals must be submitted using the document(s) and files provided by the District except for requested attachments as instructed in Section 3 and Section 7 of the RFP. The signature of all persons signing shall be in longhand. Alternative Proposals will not be considered unless requested in the specifications. No oral or telegraphic modifications will be considered.
 - b. Before submitting a proposal, Proposers shall carefully examine the specifications and the forms of the other documents. They shall fully inform themselves as to all existing conditions and limitations and shall ensure that unit cost and total cost is reflected in the proposal. All equipment on which Proposals are submitted shall be new and currently in production.
 - c. The make and brand of the equipment on which Proposal is submitted shall be stated on the RFP Price Schedule Sheet.
 - d. No Proposal shall include California sales or use tax, or Federal excise tax.
 - e. All Proposals on items shall be F.O.B. District locations as specified.
 - f. No charge for packing, draying, postage, express, or for any other purposes will be allowed over and above the Proposal prices.
 - g. All items on which Proposals are submitted shall be available for testing, inspection or trial at no expense to the District within seven (7) working days upon request. The District shall conduct necessary testing within five (5) working days. In addition, the District shall bear no liability for said items.
 - h. When requested, Proposer shall submit properly marked print samples for each device on which Proposal is made to Purchasing Department, Poway Unified School District, 13626 Twin Peaks Road, Poway, CA 92064.
 - i. Samples of items, when required, must be furnished free of expense to the District and if not destroyed by tests, will upon request, be returned at the Proposers' expense.
2. **PRICES:** All Proposal prices shall include separate quotations for each item or unit specified. In any case in which the total Proposal price does not equal the unit prices times the quantities indicated, unit prices shall govern.
3. **INTERPRETATION OF DOCUMENTS:** If any person contemplating submitting a Proposal for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other RFP Documents, or finds discrepancies in, or omissions from the specifications, he/she may submit to the Purchasing Department of the Poway Unified School District a written request for an interpretation or correction thereof. It is the sole and exclusive responsibility of the Proposer to submit such request according to the RFP Schedule. Any request of any Proposer, pursuant to the foregoing sentence that is made after the deadline date and time specified in the RFP Schedule (Item # 1 in the Information for Proposers Specific) shall be deemed untimely. Please email requests to Brenda Gachuz at

bgachuz@powayusd.com. Interpretation or correction of the proposed documents will be made only by Addendum duly issued by the Purchasing Department of the District, and will be published at the District's website at <https://www.powayusd.com/en-US/Departments/Business-Support/Purchasing/Purchasing-Bids>. The Poway Unified School District will not be responsible for any other explanation or interpretation of the proposed documents.

Proposers should not contact District personnel in any other manner related to the RFP. Unauthorized contact with any District personnel may, at District's sole discretion, be cause for rejection of a Proposal.

4. **ADDENDA OR BULLETINS:** Any addenda or bulletin issued by the Poway Unified School District during the time line for responding or forming a part of the documents issued to the Proposer for the preparation of the Proposal shall be covered in the Proposal and shall be made a part of the contract. The Proposer shall notate in the applicable spaces provided on the RFP Form any and all addenda numbers issued by the District for this RFP.

It shall be the responsibility of the Proposer to appropriately inquire with District, bgachuz@powayusd.com for any addenda issued. All addenda issued by District shall become part of the RFP and the Proposer shall acknowledge, in writing, receipt and incorporation of all addenda and clarifications in its response. Specifically, Proposer's acknowledgement of the addenda must be declared in the Proposals in Exhibit E. The Proposer's failure to identify and list in its Proposal all addenda received and included in its Proposal may be asserted by the District as a basis for determining a Proposal as non-responsive.

5. **PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL:** No person, firm or corporation shall be allowed to make or file or be interested in more than one Proposal for the same work, unless alternate Proposals are called for. A person, firm or corporation submitting a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers.
6. **PUBLIC RECORDS:** All Proposals submitted will become the property of the District. The Proposer may identify and designate, in writing, any document or material contained in the Proposal that Proposer believes constitutes trade secrets under California Government Code Section 6254.7(d). A blanket statement that all contents of the Proposal are confidential or proprietary will not be honored by the District. The Proposer's identification of a document as "proprietary" or "confidential" does not automatically confer exclusion from disclosure under the California Public Records Act.
7. **PRE-CONTRACTUAL EXPENSES:** Pre-contractual expenses are defined as any expenses incurred by the Proposer to:
(1) prepare its Proposal in response to this RFP; (2) submit that Proposal to District; (3) negotiate with District on any matters related to this RFP, including a possible contract; and (4) engage in any other activity prior to the effective date of award, if any, of a contract resulting from this RFP. District shall not, under any circumstance, be liable for any pre-contractual expenses incurred by Proposers. All expenses including, but not limited to, pre-contractual expenses incurred by the Proposer in preparing the Proposal shall be borne and paid for solely by the Proposer and shall not be included in their offers.
8. **ORAL COMMUNICATIONS:** Any oral communication by the District Contact Person or his/her designee regarding this RFP is not binding and shall in no way modify the RFP or obligations of the District, Proposer, and/or Vendor.
9. **FOOD MENU SAMPLING:** If the District considers it necessary, Proposers shall be required to arrange food menu sampling of food items that typically be served at the café. Failure to be able to provide such sampling may disqualify the Proposers submittal. Unless otherwise requested by the District, Proposers shall be required to provide the requested food sampling at the District's facility. ALL FOOD SAMPLING SHALL BE PROVIDED FREE OF CHARGE TO THE DISTRICT.
10. **AGREEMENT:** An Agreement containing all the provisions specified in Part C will be negotiated and executed by the District and the successful proposer. Proposers shall submit a sample of the contract intended for use with the District for the implementation of this RFP. District, in its sole discretion, may

elect to use the Proposer's sample contract, subject to negotiation of the terms thereof, or provide its own contract. The District reserves the right to modify its needs or the scope of any proposed contract subsequent to the review of Proposals, and to include such modifications in any contract negotiated with the successful Proposer. The complete contract will consist of the following documents: The Notice to Proposers, the Information for Proposers, RFP Sheets, RFP Price Schedule Sheets, the Accepted Proposal, the Specifications, the Plans, if any, and the Agreement, including all modifications thereof duly incorporated therein. All of the above documents are intended to cooperate and be complementary so that any instruction or requirements called for in one and not mentioned in the other, or vice versa, are to be executed the same as if mentioned in all said documents. The intention of the documents is to include all labor, materials, equipment, transportation and services necessary for the proper delivery and installation of all items called for in the contract.

11. **CONDITIONAL RFP:** The District reserves the right to reject any Proposal which imposes on purchases any conditions or terms which were not specified in the original Proposal document.
12. **RFP PROTESTS:** Proposers may file a "RFP protest" within three (3) business days after issuance of a Notice of Intent to Award. By submitting a proposal, each Proposer agrees this is an available administrative remedy that must be exhausted as a prerequisite to bringing any action against the District and agrees that failing to do so shall constitute a waiver of any and all claims against the District which relate to this Proposal in any way.

In order for a Proposer's protest to be considered valid, the protest must:

- A. Be filed in writing within three (3) business days after issuance of a Notice of Intent to Award;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific District staff determination or recommendation being protested;
- D. Specify, in detail, the facts and law supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

By submitting a proposal, Proposer agrees that no fact, law, or legal theory that is not identified in the protest will be used in any subsequent arbitration, court action, or other form of binding dispute resolution. If the protest does not comply with each of these requirements, it will be rejected as invalid. If the protest is valid, the District designee shall review the basis of the protest and all relevant information and provide a written decision to the protestor.

13. **NO AGREEMENT UNTIL SIGNED:** No Services Agreement with the District is effective until both parties have signed a contract and the District's Board of Trustees has authorized the contract.
14. **NEWS RELEASES:** News releases pertaining to any award resulting from this RFP may not be made without the prior written approval of the District.
15. **USE OF DISTRICT EMPLOYEES' NAMES:** The successful Proposer must agree to not use the names, office phone numbers, email addresses, and/or addresses of District employees for any purpose not directly related to this RFP.
16. **OTHER DISTRICT RIGHTS:** The rights, powers, and discretion expressly conferred upon the District under the RFP Documents are not intended to be exclusive but are cumulative and in addition to, and not a substitute for, every other right, power, or discretion existing or available to the District under the RFP Documents or applicable laws.

RFP FORM

TO: POWAY UNIFIED SCHOOL DISTRICT, acting by and through its Governing Board, herein called the District.

Pursuant to and in compliance with the Notice to Proposers and the other documents relating thereto, the undersigned Proposer, having familiarized him/herself with requirements to include a Services Agreement, the Specifications, the Plans, if any, and other Proposal documents, hereby proposes and agrees to perform, within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, all in strict conformity with the Specifications, Plans, if any, and other Proposal documents, including Addenda Nos. __ on file at the Purchasing Services office of said District for the prices set opposite the articles listed herein on the RFP Price Schedule Sheets.

It is understood that the District reserves the right to reject this RFP in whole or in part; to waive informalities in the Proposal or in the RFP process, and that this Proposal shall remain open and not be withdrawn for a period of sixty (60) days from the date prescribed for the opening of this RFP.

It is understood that the successful Proposer will be required to deliver: ALL ITEMS OR SERVICE OF THE STATED RFP LISTED HEREIN, AS STIPULATED IN THE SPECIFICATIONS, PLANS, IF ANY, AND OTHER RFP DOCUMENTS FOR THE FOLLOWING:

RFP RFP 2022-02: ON-CALL CATERING AND CAFE SERVICE

RFP SUBMITTAL CONTENT: A complete Proposal Submittal shall include all of the following documents:

- RFP FORM, PROPOSAL REQUIREMENTS (SECTIONS 1-13), SAMPLE SERVICES AGREEMENT and PRICE SCHEDULE SHEETS which must be submitted on a USD DRIVE IN ADDITION TO TWO (3) SETS OF ALL DOCUMENTS IN PRINTED FORMAT and signed by Proposer's authorized agent/officer.
- Proposers list of REFERENCES.
- NON-COLLUSION DECLARATION form.
- PROPOSER'S CERTIFICATION REGARDING WORKERS' COMPENSATION.
- NONDISCRIMINATION STATEMENT.
- PROPOSER'S SAMPLE SERVICES AGREEMENT, if any.

It is understood and agreed that if written notice of the acceptance of this Proposal is mailed, e-mailed or delivered to the undersigned within ninety days (90) days after the opening of the RFP, or at any time thereafter before this RFP is withdrawn, the undersigned agrees that he/she will execute and deliver to the District a Services Agreement in accordance with the Proposal as accepted, all within five (5) days after receipt of notification of award, and that performance of the Services Agreement shall be commenced immediately by the undersigned Proposer, upon due execution and delivery to the District of the Services Agreement, and shall be completed by the Proposer in the time specified in said RFP Documents.

Notice of acceptance or requests for additional information should be addressed to the undersigned at the address stated below.

Proper Name of Proposer

Address

By: _____
Signature of Authorized Agent/Officer

City, State & Zip Code

Print Name Telephone Number

Title

E-Mail address

PROPOSAL REQUIREMENTS

General

Each proposal shall include a description of the type, technical experience, background, qualifications and expertise of the Proposer's firm. The description shall show that the firm possesses the demonstrated skills and professional experience to perform the general functions of the Project and fulfill the goals and vision of the District as its Caterer.

Describe in detail the firm's methods and plan for carrying out the Scope of Work. Include in this information a detailed description of any scheduling, staging, and/or logistical issues based on the timelines and information provided in this RFP. Describe the firm's approach to the Project, including any creative methodology or technology that the firm uses or unique resources that the firm can offer.

Contents

1. Executive Summary (Limit: 1 Page)

Provide an overview of the entire proposal describing the general approach or methodology the Proposer will use to meet the goals and fulfill the general functions of the Caterer as set forth in this RFQ/RFP.

2. Table of Contents (Limit: 1 Page)

Include a complete and clear listing of headings and pages to allow easy reference to key information.

3. Identification of the Proposer (Limit: 1 Page)

- a) Legal name and address of firm
- b) Legal form of firm (corporation, partnership, etc.) and state of registration
- c) Address and phone number of the office that will be primarily responsible for providing the required Catering services

4. Staffing Resources (Limit: 2 Pages)

Identify three (3) persons who will be principally responsible for working with the District. Indicate the role and responsibility of each individual. If the Proposer is chosen as a finalist, those principal individuals must attend the interview and in-person presentation if such meetings are necessary and required.

5. Fiscal Stability (Limit: 1 Page, not including supporting documentation)

The Proposer must provide evidence of company stability and financial resources, including, but not limited, to the following:

- a) A letter from a financial institution stating a current line of credit.
- b) Latest audited financial statement and/or annual report that have been certified by a Certified Public Accountant. This information will remain confidential and will not be subject to public disclosure.

Proposers must also indicate the current value of all work they have under contract and must provide business revenues for the past five (5) years.

6. Experience and Technical Competence (Limit: 1 Page)

- a. Experience - The Proposer shall provide a description of how the Proposer's experience, technical and professional skills will meet the goals and fulfill the general functions identified in this RFQ/RFP. The proposal must include a discussion regarding the experience in working with a school district.

- 1) *Ability to Respond to District Needs*

The District requires that the Caterer's key personnel and its consultants assigned to District Projects be able to respond to District needs within a reasonable time.

- 2) *Contracting History*

Describe in detail if Proposer has been involved in any of the following within the last five (5) years:

- a) Failure to enter into a contract or professional services agreement once selected
- b) Withdrawal of a proposal or bid as a result of an error
- c) Debarment by any municipal, county, state, federal, or local agency
- d) Involvement in litigation, arbitration, or mediation in the last ten (10) years
- e) Conviction of the firm or its principals for violating a state or federal antitrust law by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of violating any other federal or state law related to bidding or performance of services
- f) Knowing concealment of any deficiency in the performance of a prior contract
- g) Falsification of information or submission of deceptive or
- h) Willful disregard for applicable rules, laws, or regulations

Failure to disclose information regarding any of the above may be deemed to indicate an unsatisfactory record of performance. The Proposer may describe facts in mitigation of any of the above examples as information in the foregoing categories may be considered in determining the suitability of the Proposer to perform the needed Catering services.

- 3) *Additional Information*

Please provide any additional information or description of resources pertinent to this RFQ/RFP, including, but not limited to, letters of reference or testimonials, total number of permanent employees, and ongoing commitment to professional education of staff.

- b. Technical Competence

- 1) Description of in-house resources (i.e., computer capabilities, software applications, modem protocol, modeling programs, etc.)
- 2) Ability to draw upon multi-disciplinary staff to address the services required under this RFQ/RFP.

7. *Proposed Method to Accomplish the Work* (Limit: 1 Page)

Describe the technical and managerial approach to the proposed partnership with the District. Proposer must take into account the District's goals for the Project and the general functions required. In reviewing the Scope of Services described in Exhibit "A," the Proposer may identify additional necessary tasks and discuss them in its proposed method to accomplish the work.

8. Pricing and Contingency (Limit: 1 Page)

As described in Section 3.2, all proposers shall submit detailed descriptions of their proposed financial arrangement for the proposed Services.

9. Insurance (Limit: 1 Page, not including supporting documentation)

- a. Each Proposer must demonstrate that it can maintain adequate insurance as required herein. Therefore, each proposal must include a letter from the Proposer's insurance company indicating its ability to provide insurance coverage on behalf of Proposer in accordance with the following requirements:
- b. A.M. Best financial strength/size rating for insurer of no less than A:VII.
- c. Commercial General Liability Insurance at least as broad as Insurance Services Office General Liability Coverage (Occurrence Form CG 0001) in the amount of Three Million Dollars (\$3,000,000) per occurrence for bodily injury, personal injury, and property damage and Five Million Dollars (\$5,000,000) aggregate.
- d. Automobile Liability Insurance at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto) in the amount of One Million Dollars (\$1,000,000) for bodily injury and property damage for each occurrence.
- e. Workers' Compensation Insurance for all of Proposer's employees in accordance with California law and Employer's Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.

In the event Caterer installs tenant improvements, Builder's All-Risk Insurance, written on a non-reporting, completed value basis, providing coverage in an amount not less than the greater of (1) the full estimated replacement cost of the work. Such all-risk policy must cover:

- (1) Losses arising from causes that include, without limitation, fires, windstorms, lightening, explosions, theft, earth movement (including, but not limited to earthquake, landslide, and subsidence), collapse, and water damage;
- (2) Costs associated with clean-up, demolition, repair or other correction of covered losses, including, without limitation, fees for necessary architectural, engineering, and other professional services; and
- (3) All ensuing or consequential losses attributable to causes of loss excluded under the all-risk policy, including, without limitation, faulty design or workmanship.

Such all-risk policy must be endorsed for extended coverage, vandalism, malicious mischief, and theft, including theft of materials not then incorporated into the work. Any exclusion of losses attributable to faulty design or workmanship must not exceed the total costs the District would have incurred to repair or otherwise correct the fault if it had been discovered prior to the loss having occurred.

- f. All insurance must be in a form and with insurance companies acceptable to the District.
- g. Insurance carriers must be qualified to do business in California and maintain an agent for service of process within the state.
- h. Indicate current value of all work the Proposer has under contract.
- i. Indicate current Workers' Compensation experience modification ratio.
- j. The policies shall contain an endorsement naming the District, its employees, consultants, and agents as additional insureds (except for the Workers' Compensation policy), providing that the policies cannot be cancelled or reduced, except on thirty (30) days' prior written notice to the District, and specifically stating

that the coverage contained in the policies affords insurance pursuant to the terms and conditions set forth in the applicable agreement.

- k. In addition to the above requirements, the following requirements will apply to each Caterer's insurance coverage:
 1. If a Caterer does not maintain the required insurance in full force and effect, the District may either immediately terminate the Caterer or, if available at a reasonable cost, purchase necessary insurance and pay, at Proposer's expense, the premium thereon.
 2. Each Caterer will be required to provide one or more certificates of insurance, on the form provided by the District, showing that the aforesaid policies are in effect in the required amounts.
 3. The insurance provided by a Caterer shall be primary to any coverage available to the District. The insurance policies (other than Workers' Compensation) shall include provisions for waiver of subrogation.
 4. Each Caterer shall be required to indemnify the District, as permitted by law, and neither the insurance coverage maintained by a Caterer nor the proceeds of such insurance shall constitute a limitation on that obligation.
- l. The submission of a proposal shall be deemed a representation that the Proposer, if selected, can provide insurance in accordance with the foregoing requirements.

10. Litigation Information (Limit: 1 Page)

The proposal must include the litigation history of any claims filed by the firm or against the firm in the last five (5) years. The Proposer may describe mitigating facts as such information may be considered in determining the suitability of the Proposer to perform the needed catering services.

11. References (Limit: 1 Page)

Proposer must be able to present evidence of satisfactory experience in providing similar materials and/or services to that requested in this Request for Proposal. List as references the three (3) nearest companies or governmental agencies for the proposed goods or services which can be contacted or inspected for an assessment of past client satisfaction.

12. Other Information (Limit: 1 Page)

Provide any other information that Proposer believes is necessary in response to this RFQ/RFP.

13. Appendices (No Limit)

Proposers may include resumes of individuals who will work on the Project.

NONCOLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing RFP.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal. The Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal; or to refrain from responding. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Proposer. All statements contained in the Proposal are true. The Proposer has not, directly or indirectly, submitted his/her Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Proposal depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this:

_____ Day of _____

City of _____ State of _____

Signed: _____

Title: _____

NON-DISCRIMINATION

Every person, firm, company or corporation, with whom the Poway Unified School District does business with, regardless of the dollar amount, will be required to sign the following statement:

Proposer will not discriminate against any employee or applicant for employment in connection with the performance thereof, because of race, religion, color, age, sex, national origin or physical handicap; and shall act to ensure that applicants are employed, and employees are treated, without regard to their race, sex, religion, color, age, national origin or physical handicap.

Name of Individual, Company or Corporation

By

Title

Address

City

State

Zip Code

EXHIBIT "A"

SCOPE OF SERVICES

The Scope of Services includes, but is not limited to, the following:

I. Provision of On-Call Catering Services

Caterer shall be provided a license to use the Café facilities to prepare and provide on-call catering services to District board meetings, staff meetings, and/or other events to be conducted by the District. Caterer shall be prepared to provide such services with little advance notice by the District in the event an emergency meeting or other event requires such Catering Service. Caterer's proposal should document any advance notice requirements potentially applicable to the Caterer's service. Advance notice requirements shall be mutually agreed upon and set forth in the final agreement. Caterer shall provide meal types/categories subject to the mutual agreement of the parties consistent with its proposal. Such meals shall also be subject to mutually agreed upon rates and pricing based on the Caterer's basic rate and pricing proposal submitted in response to this RFP. Caterer's proposal should contain detailed information about the above-described meal type and pricing.

As shall be memorialized in the final agreement, the estimated amounts/quantities of catered food service set forth in the RFP are provided as information only about estimates of potential orders by the District. At no time shall the District be bound to order any specific quantity or amount of catered food service.

II. Provision of Discounted Meal Service to District Employees.

The Caterer shall provide discounted meal services (i.e. sandwich, soup, salads, etc.) for District employees from the Café from the hours of 7:00 AM to 2:30 PM, Monday-Friday in the Café, unless otherwise agreed to by the parties. Caterer's proposal shall include detailed information regarding Caterer's proposed menus and rates. The Caterer's final menu requirements and discounted meal rates shall be mutually negotiated and agreed upon as set forth in the final agreement to be executed by parties. As described in the estimates of meal purchases by District employees in the RFP, the District shall not be required to guarantee any specific amount/quantity of District employee purchases of meals.

III. Use of Café to Sell Meals/Catering Services to Third Parties.

In exchange for the payment of the license fees and/or revenue sharing described in the RFP, the District is further willing to provide the Caterer a non-exclusive license to use the Café to provide the meal services to not only District employees, but also third parties/members of the public, using the existing Café space, equipment and seating area. In addition to all of the above, the District would also be willing to permit the Caterer to use the Café for the preparation of food to be catered to third parties. The Café facilities shall generally be available to the Caterer for use for such third party services from the hours of 6:00 AM to 4:00 PM, Monday-Friday, and/or as otherwise mutually agreed to by the parties. However the District would reserve the right to use the Café area if needed for District purposes upon reasonable notice to the Caterer.

Caterer's proposal should provide a description of Caterer's plans for potential meal/catering service to third parties.

IV. Caterer's Responsibilities.

In addition to the above Services/rights, Caterer shall also have the following general maintenance and repair obligations:

1. Caterer shall keep and maintain all District owned Café facilities and equipment in clean, good working order, normal wear and tear excepted.
2. Caterer shall repair and/or replace any District owned Café facilities or equipment damaged by the Caterer and/or any third party, unless such damage is caused by the negligence or willful misconduct of the District or its employees.

The final Scope of Services shall be further negotiated and memorialized in the final written agreement.

EXHIBIT "B"

DESCRIPTION/DEPICTION OF CAFÉ FACILITIES

2,012 square feet, commonly referred to as the "Café", located at 15250 Avenue of Science, San Diego, California 92128-3406. The following District Owned equipment can be available for use by the awarded Contractor:

<u>Item Description</u>
Small Refrigerator – Beverage Air
Walk-in Cooler – Commercial Cooling
Rolling Cooler – Commercial Cooling
Deep Fryer – Pitco – Solstice Supreme
Grilles – Montague
Oven – Blodgett
Ice Maker – Manitowoc
Freezer - Randell
Slicer – Globe
Mixer – Globe
Front Serving Line (ALL) – ESE
Vending Machines*
Coffee Maker*
Fountain Drink*

EXHIBIT "C"

AGREEMENT FOR ON-CALL CATERING/CAFÉ SERVICES BETWEEN POWAY UNIFIED SCHOOL DISTRICT AND [TO BE INSERTED]

This Agreement for On-Call Catering/Café Services ("Agreement") is entered into this ____ day of _____, 2021 between **POWAY UNIFIED SCHOOL DISTRICT**, 13626 Twin Peaks Avenue, Poway, California 92064 hereinafter referred to as District and **[TO BE INSERTED]** hereinafter referred to as Contractor. The District and Contractor may be hereinafter referred to as "Party" or "Parties."

RECITALS

WHEREAS, the District currently owns and operates its Administration Center located at 15250 Avenue of Science, San Diego, CA 92128, which includes a full kitchen and seating area consisting of approximately 2,012 square feet, commonly referred to as the "Café;" and

WHEREAS, the District currently conducts governing board meetings, administrative meetings, student and staff activities as well as other special events at the Administration Center, and many of these meetings/events require food service on a pre-planned and/or on-call basis; and

WHEREAS, in addition to the on-call catering needs of the District, the District also desires to make food and beverage service available from the Café for District employees and clients/visitors at the Administration Center; and

WHEREAS, in exchange for these services to the District, the District is also willing to grant the Contractor a license to use the Café to provide the meal services to third parties/members of the public, using the existing Café space, equipment and seating area, as well as the potential preparation of food to be catered to third parties; and

WHEREAS, the Parties now desire to memorialize the terms and conditions pursuant to which the Contractor shall provide the On-Call Catering/Café services to the District utilizing the existing Café premises and equipment.

NOW THEREFORE, District and Contractor, for the consideration stated herein, mutually agree as follows:

ARTICLE I

SCOPE OF SERVICES AND RESPONSIBILITIES

1. On-Call Catering/Café Services.

The Contractor shall provide to the District on the terms set forth herein all the services articulated in the Contractor's scope of services set forth in Exhibit "A" ("Services"). The Parties agree that if there is a proposal or similar document provided by the Contractor this Agreement shall be controlling over any of the terms contained within the Contractor's proposal or similar document, unless such terms are explicitly incorporated into this Agreement and/or the Exhibits hereto.

2. License to Use District Property.

As further described in Exhibit "A" and subject to the provisions of this Agreement, the District hereby grants Contractor, its subcontractors, agents and employees a nonexclusive license to use, together with rights for ingress and egress, portions of District property and equipment associated with the Café premises as described and depicted in Exhibit "B"; for the purpose of providing the Services

and operating the Café as described herein. The Contractor shall be entitled to use such portions of the District property for the operation of the Café and provision of the Services from 6:00 AM to 4:00 PM, Monday-Friday, unless otherwise mutually agreed to by the Parties. However, the District reserves the right to relocate and/or reschedule Contractor's Café activities in the event the District requires use of the District property for District purposes. District may also exercise its right of ingress and egress to the District property at any time without notice to Contractor. Contractor shall not use the licensed premises for any purpose not specifically authorized by this Agreement.

3. Contract Term.

The term of this Agreement shall begin on November 1, 2021, and shall end on June 31, 2022, unless earlier terminated as described in this Agreement or unless amended by mutual written agreement of the Parties. The Agreement may be extended for up to three additional one year terms by mutual agreement.

4. Representations and Warranties.

Contractor makes the following certifications, representations, and warranties for the benefit of the District and Contractor acknowledges and agrees that the District, in deciding to engage Contractor pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Contractor's engagement hereunder:

- a. Contractor is qualified in all respects to provide to the District all of the Services contemplated by this Agreement and, to the extent required by any applicable laws, Contractor has and/or will obtain all such licenses and/or governmental approvals as will be required to carry out and perform, for the benefit of the District, such Services as are called for hereunder.
- b. Contractor, in providing the Services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. Contractor shall be liable for all violations of such laws and regulations in connection with Services.
- c. The Contractor will perform its Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Contractor will furnish, at its expense, those Services that are set forth in this Agreement and Exhibit "A" and represents that the Services set forth in said Exhibit are within the technical and professional areas of expertise of the Contractor or any subcontractor the Contractor has engaged or will engage to perform the Service(s). The District shall request in writing if the District desires the Contractor to provide Services in addition to, or different from, the Services described in Exhibit "A". The Contractor shall advise the District in writing of any Services that, in the Contractor's opinion, lie outside of the technical and professional expertise of the Contractor.
- d. Contractor warrants that all of Contractor's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor further represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Contractor's employees or subcontractors who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any of Contractor's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from District property by the Contractor and shall not be re-employed to perform any of the Services.

5. Independent Contractor

Contractor is and shall be deemed at all times to be an Independent Contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between District and Contractor or of Contractor's agents or employees. Contractor exclusively assumes the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees shall not be entitled to any rights or privileges of District's employees and shall not be considered in any manner to be District's employees. Contractor shall pay all wages and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, Workers Compensation, Unemployment Insurance, income tax withholding and other required matters.

ARTICLE II

PAYMENTS TO DISTRICT

1. License Fee:

In exchange for the license to use District property for the provision of the Services and use the Café for third party meal service/catering, pursuant to the terms and conditions of this Agreement, the Contractor agrees to pay District a monthly License Fee of \$_____ dollars (\$_____). The License Fees shall not be subject to any offset and/or credit for any cost incurred by Contractor in the operation or management of the Café and/or provision of catering/meal service to third parties. License Fees shall be due and payable to the District on the 1st every month. Any License Fee payment not made by the 15th of any month shall be subject to a ten percent (10%) late fee, which shall be compounded every month thereafter that any such License Fee remains unpaid.

2. Profit Sharing.

In addition to the License Fees described above, the Contractor shall share in the profits made by Contractor for any direct sales from Café to third parties and/or use of the Café to provide catering/food service to third parties based on the following calculation:

[TO BE DETERMINED]

3. Accounting/Financial Records.

Contractor shall at all times, be responsible for keeping full and accurate financial account records, cash receipts, and other pertinent data associated with its provision of the Services to the District as well as its provision of meal/catering services to third parties. The District shall have the right to inspect and examine such records, at no cost, within five (5) business days of providing notice to Contractor. Contractor shall maintain all such financial records for a period of at least four (4) years after termination of this Agreement.

ARTICLE III

DISTRICT OBLIGATIONS

1. Payments for Catered Food

The District will place all orders for catered food service in accordance with the mutually agreed upon Catered Food order process and rates set forth in Exhibit "C." The District shall provide payment to the Contractor for all such Catered Food at least monthly as further described in Exhibit "C."

2. District Paid Café Costs.

The District further agrees to pay the cost of all water, pest control, and trash disposal services used by Contractor during the term of this Agreement.

ARTICLE IV

TERMINATION

1. Termination for Cause.

This Agreement may be terminated by either Party upon ten (10) days written notice to the other Party in the event of an uncured substantial failure of performance by such other Party, including but not limited to failure of the Contractor to provide quality Services pursuant to this Agreement, or any separable part thereof, including furnishing adequate food and properly trained personnel or if Contractor persistently disregards laws, ordinances or instructions of the District or is otherwise guilty of a substantial violation of this Agreement. In the event of such substantial failure either Party may, without prejudice to any other right or remedy, serve written notification of its intention to terminate and unless, within ten (10) consecutive calendar days after service of such notice the condition or violation shall cease and satisfactory arrangements for the correction thereof be made, this Agreement shall, upon the expiration of the ten (10) consecutive calendar days, cease and terminate..

Conversion Clause.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Paragraph 3 below, and Contractor shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

Termination for Convenience.

This Agreement may be terminated without cause by the District upon thirty (30) days written notice. In the event of a termination without cause, the Contractor shall make all payments due to District as set forth above, pro-rated through the effective date of termination.

4. Holding Over

In the event this Agreement expires without renewal or extension, Contractor may provide services on a week-to-week basis and Contractor agrees to comply with all terms of this Agreement for the duration of the Contractor hold over.

ARTICLE IV

PERSONNEL POLICIES AND PRACTICES

1. Hiring Practices

Contractor will consider all persons for employment, transfer, promotion, training and pay increases without regard to race, color, age, creed, sex, disability, veteran status, ancestry or national origin.

2. Training

Contractor is responsible for effectively training its employees to assure they perform their jobs in a proper, safe, and sanitary manner. Contractor will observe all federal, state and local laws pertaining to health and safety training. Contractor shall ensure that all of its employees are properly trained in the areas of fire and safety, and safe equipment operation. Copies of certificates of Bloodborne Pathogen training for **all Contractor's employees will be kept on file in the Contractor's office.**

3. Health

Contractor is responsible for ensuring that its employees are properly licensed and conform to all applicable legal and health requirements as mandated by federal, state and local laws (i.e., for food handling, etc.). **Copies of all required employee health, training and other certifications will be kept on file in the Contractor's office.**

4. Uniforms/Appearance

Contractor will wear and furnish its employees with a standard uniform (shirt, blouse, pants, apron, etc.) subject to the reasonable review and approval of the District for the Contractor's operations on District property. Uniforms should cause Contractor's employees to be easily identified by District's employees and clients. Contractor is to also furnish name badges. Contractor's employees will maintain a neat, clean appearance, including neatly trimmed and well-groomed hair. Uniforms and aprons shall be clean, neat and well-fitted. Shoes worn by employees shall be such that feet are protected and well covered with soles of non-slippery material. Socks shall be worn at all times.

5. Fingerprinting Requirements

Contractor hereby acknowledges that it is to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. As required by Education Code Section 45125.1, the Contractor must provide for the completion of a Fingerprint Certification form, included in Exhibit "D" attached hereto, prior to any of the Contractor's employees, coming into contact with the District's pupils. The District has analyzed the work to be done pursuant to this Agreement and has determined that Contractor's employees may have contact with pupils.

ARTICLE V

LICENSE REQUIREMENTS FOR DISTRICT FACILITIES AND EQUIPMENT

1. Ownership

The District will at all times remain the legal owner of the kitchen and dining facilities of the Café which Contractor has been granted a license to use pursuant to this Agreement, including, but not limited to, the furniture and the equipment and small wares described in Exhibit "B." Contractor is responsible to provide any equipment it deems necessary above and beyond what is indicated in Exhibit "B". As part of its license to use the Café to provide food service to the District and third parties from the Café, Contractor will have the use of said facilities and equipment during the term of the Agreement.

2. License Not a Lease

No legal title or leasehold interest in the Café or appurtenances thereto shall be deemed or construed to have been created or vested in the Contractor by any provision/term of this Agreement.

3. Liens

Contractor shall keep the Café and any other District property, including all facilities and

equipment therein, free and clear of all liens and claims for labor, services, materials, supplies, or equipment performed on or furnished to the Contractor. If a lien or other encumbrance attaches to the Café or any other District property, Contractor shall promptly pay and discharge, or cause such property to be released from or cause to be insured or bonded over any such lien or claim of lien.

4. As-Is Condition

Contractor accepts the Café and other District property subject to the "As Is," "Where Is" condition of the District property and subject to any condition that may exist, without any representation or warranty by the District. Contractor acknowledges and agrees that the District makes no representations or warranties, express or implied, as to the District property. Contractor has conducted all inspections of the District property to its full and complete satisfaction and acknowledges that it will be using the District property with full knowledge of any and all conditions of the District property. Contractor hereby assumes the risk that certain conditions may exist on the District property and hereby releases the District of and from any and all claims, actions, demands, rights, damages, costs or expenses that might arise out of or in connection with any such condition of the District property.

5. Alterations and Signage

The District must first approve any improvements, changes and/or additions to the kitchen and dining facilities, including equipment, in writing. All improvements and/or changes and additions, once approved by the District, shall be provided by and at the expense of the Contractor, unless otherwise agreed upon by the District. Contractor is responsible for providing effective signage in the dining facilities so that employees and clients are notified about available items and current prices.

6. Utilities

A separate meter to track electricity and gas usage will be installed in the kitchen. The-Contractor will be responsible to pay the monthly bills for electricity and gas. The District will continue to pay for the dining room electricity and gas expense.

7. Maintenance and Repairs

The Contractor will be responsible for the routine and regular maintenance, and repairs of the District owned equipment in the Café, unless otherwise mutually agreed to by the Parties. The Contractor will be responsible for the maintenance and repair of the grease traps. Contractor is responsible for mitigating damages to District's facilities and equipment by handling repairs as soon as the need is observed. Contractor is solely responsible for the maintenance and repair of any vending machines.

8. Maintenance Responsibilities

It is to be understood that the sole decision as to the application of any maintenance costs, other than the routine maintenance and repairs mentioned above, rests with the District's Director of Facilities, Maintenance & Operations. Under no conditions shall it be inferred the District shall automatically pay any such maintenance costs unless expressly agreed to by the District. If it is determined by the District's Director of Facilities, Maintenance & Operations that a maintenance requirement was due to Contractor error, oversight, or negligence, then said Contractor shall be obligated for the entire maintenance cost, be it by Contractor or by Contractor's staff. If the maintenance requirement shall be determined to be of a mutual cause, then the District's Director of Facilities, Maintenance & Operations shall determine the appropriate split of the repair costs.

9. Access/Safety

The District reserves the right to access the kitchen and dining areas provided for under the Agreement for inspection and maintenance purposes without giving prior notice to Contractor. Contractor shall observe security procedures established by the District and will secure and alarm the kitchen daily

prior to departing. Access to the kitchen area is limited to authorized employees and vendors of the Contractor and District.

10. Tobacco-Free Facility

Contractor shall observe the County's "Tobacco-Free" policy, which prohibits use **(smoked or smokeless)** anywhere on the premises.

11. Financial Reporting

Contractor will keep accurate records detailing relevant information about its operations and will provide District with a quarterly report outlining sales and expenses upon request.

ARTICLE VII

INSURANCE AND INDEMNITY

1. Required Insurance Coverages

During the term of the Agreement, Contractor shall maintain Commercial General Liability and Property Damage Insurance to protect it and the District from all claims for personal injury, including accidental death, as well as from claims for property damage arising from the operations under this Agreement. The minimum amounts of such insurance shall be as hereinafter set forth.

Amounts of Insurance:

General Liability

Comprehensive Form – Products/Completed Operations	Bodily injury and Property Damage	\$1,000,000
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Auto Liability

Comprehensive Form – Owned, Non-owned, Hired	Bodily injury and Property Damage Combined	\$1,000,000
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Prior to the commencement of the Agreement, the Contractor shall file with the District, certification of Insurance naming the **Poway Unified School District, its officers, agents, and employees as additional insureds.** The insurance policy(ies) shall include a clause stating that the District shall be notified in writing by the insurance company of any changes in coverage or cancellations not less than thirty (30) consecutive calendar days prior to the effective date of such changes or cancellations. The endorsement and certificate(s) shall be primary as to any other insurance, and shall provide primary defense and indemnification without requirement of contribution. **A copy of all insurance policies shall be provided to the District's Purchasing and Risk Management Departments.**

2. Workers Compensation

Contractor shall provide, during the life of this Agreement, workers compensation insurance or shall self-insure in compliance with provisions of Section 3700 of the Labor Code of the State of California. In the event any of the Contractor's work is sublet, the Contractor shall require the subcontractor similarly to provide workers compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. The Contractor's Certificate Regarding Workers Compensation, appended to this Agreement as Exhibit "D", shall be completed by Contractor and delivered to the District prior to the commencement of services to be provided under this Agreement.

3. Indemnification

To the fullest extent permitted by law, Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, vendors, or Contractor's agents in connection with the performance of the Contractor's Services, or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its officers, employees, or agents. Contractor shall reimburse District and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials officers, employees, agents, or volunteers. Contractor agrees to waive all rights of subrogation against the District.

ARTICLE VIII. GENERAL PROVISIONS

1. Changes

By written notice, District may, from time to time, require, and the Contractor may request changes in, but not limited to, service, report requirements, training requirements, maintenance requirements and food services furnished by Contractor. If any such change causes an increase or decrease in the costs of services under this Agreement, or the time required for its performance, Contractor shall promptly notify District thereof and assert its claim for adjustment within fifteen (15) consecutive calendar days after the change is ordered and an equitable adjustment shall be negotiated within thirty (30) consecutive calendar days.

2. Disputes

This Agreement shall be construed and all disputes hereunder shall be settled in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in San Diego County. In the event of a dispute between the Parties regarding performance of their respective duties and obligations under this Agreement, the Parties shall attempt to resolve the dispute by meeting and negotiating in good faith. Pending resolution of any dispute, Contractor agrees to continue to diligently provide all Services required by this Agreement. In the event that the Parties cannot resolve any such dispute after meeting and negotiating in good faith, the Parties agree to submit such controversy or dispute to non-binding mediation for resolution. If the dispute is still not resolved the Parties may mutually agree to submit the matter to binding arbitration.

3. Assignments and Subcontracting

Contractor may not assign, transfer, and/or subcontract either this Agreement or any portion thereof without prior written consent of District.

4. Waiver

No waiver of a breach of any provision of this Agreement shall be effective unless such waiver is in writing. Furthermore, no waiver of one breach shall constitute a waiver of any other breach of such provision. Failure of the District or Contractor to enforce at any time, or from time to time, any provisions of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

5. Federal, State, and Local Laws

Contractor warrants that in the performance of this Agreement it shall comply with all applicable federal, state, and local laws and ordinances, rules, and regulations.

6. Notice of Labor Dispute

Whenever Contractor has knowledge that any actual or potential labor dispute may delay performance of this Agreement, Contractor shall immediately notify and submit all relevant information to District. Contractor shall supply District with one copy of all existing relevant labor contracts.

7. Interruption of Service and Performance

The parties to this Agreement shall be excused from performance hereunder during the time and to the extent that they are prevented from obtaining or performing the service by act of God, fire, flood, loss of facilities, and/or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party and provided further that such non-performance is not due to the fault or negligence of the non-performing party.

8. Administration of Agreement/Designee(S)

All matters related to administration of the Agreement shall be directed to the District designee(s), as follows:

Ron Little, Associate Superintendent, Business Support Services
15250 Avenue of Science, San Diego, CA 92128,

The contact information for the Contractor is as follows:

[TO BE DETERMINED]

9. Insertions into Agreement

Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

10. Entire Agreement of Parties

This Agreement constitutes the complete and exclusive statement of terms of the Agreement between Contractor and District and it supersedes all prior representations, understandings, and communications. No other agreements, oral or written, pertaining to the performance under this Agreement, exists between the parties. This Agreement can be modified only by an agreement in writing, signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

POWAY UNIFIED SCHOOL DISTRICT

[CONTRACTOR TO BE INSERTED]

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT "A"

Scope of Services/Responsibilities

[SAMPLE –FINAL TERMS TO BE NEGOTIATED]

I. FOOD SERVICES

1. Daily Food Service to District Employees

Contractor agrees to provide a food service program in the Café, for the benefit of the District's employees and/or guests, Monday —Friday. Daily food service shall be provided between 7:00 a.m. and 2:30 p.m. and shall include, but not be limited to: coffee; hot water; beverages, including juices, iced tea and sodas; pastries, including muffins and doughnuts; a variety of snacks, including candies, chips and nuts; and nutritious items, including yogurt, fruit, and heart-smart foods. Such daily food service shall be provided to District employees at a mutually agreed upon discount rate as follows:

[TO BE DETERMINED]

During the lunch period, with core hours from 11:00 a.m. to 2:30 p.m., food to be provided will include but not be limited to daily hot food specials, soup, sandwiches and a salad bar. Breakfast foods, including grill items, shall be served from 7:00 a.m. to 11:00 a.m. However, the final menus and rates for food service to District employees shall be subject to the mutual agreement of the Parties.

2. Catering and Coffee Service

Contractor will provide on-call catering and coffee and beverage service, as requested on a properly approved District Catering Request Form by District staff or authorized workshop and meeting coordinators for workshops and meetings held at District's facilities. The Catering Request Form and Catering Process is further described in Exhibit C to this Agreement. On a monthly basis, the Contractor shall submit an itemized invoice for payment for catering services rendered, along with copies of catering requests to the District's Finance Department.

3. Vending Machines

Contractor may provide one or more vending machines in the Café as approved by District. Vending items may include, but are not limited to food and beverage items approved by the District.

4. Hours of Operation

Normal hours of operation shall be from 7:00 a.m. to 2:30 p.m. during all workdays of the District. Contractor will provide services outside of these hours for activities being held at the District's facilities upon request of District.

5. Pricing/Menus

Contractor will consult with District to determine regular menu items and initial pricing. District reserves the right to approve subsequent price and menu changes **prior to implementation of increase/change.** Items available for purchase from the kitchen and vending machines at the District Administration Center by District employees, and clients/visitors will also be sold at prices acceptable to the District.

6. Housekeeping/Sanitation

Contractor is responsible for keeping the kitchen and dining area, including equipment and tables, clean and sanitary. The coffee-urn area is to be sanitized and thoroughly cleaned weekly. Contractor shall clean the dining area periodically throughout each day, and will regularly, at least three (3) times a day, dispose of all trash and garbage in the waste containers provided by the District. Contractor will ensure

that the kitchen area, including the floor, is properly cleaned and sanitized at the conclusion of each day's operations. District will be responsible for cleaning the dining areas, floor and walls, in the cafeteria each evening. Non-routine housekeeping, including carpet and upholstery cleaning, shall be the responsibility of the District.

7. Food Stock/Supplies

Contractor is responsible for the acquisition of and payment for all food items required during the term of this Agreement. District has sole discretion as to authorized products. Food products shall meet all federal, state and local health requirements and will be purchased in quantities sufficient to meet demands.

8. Communications

a. District Employees and Clients/Visitors

Contractor agrees to maintain professional and courteous communications with District employees and clients/visitors with priority placed on customer satisfaction. Contractor shall train its employees on customer sensitivity and will establish a procedure for effectively resolving customer complaints.

Contractor will furnish the District with a weekly menu detailing daily specials. Contractor shall furnish menus one week in advance to allow District adequate time to print and distribute menus to all employees. The District will bear the cost for printing and distributing the menus. District must approve written announcements to District employees from Contractor in advance.

b. Relationship

Contractor and District agree to maintain an effective working relationship and to discuss matters pertinent to the food service program on a regular basis.

9. Evaluations

Contractor will, at least twice annually monitor the quality of their food service program by surveying District employees and clients to determine their satisfaction with the food service program. District reserves the right to independently conduct surveys about the food service program and to involve District employees in the process.

10. Additional Requirements applicable to Third Party Food Service.

a. Availability.

As described in the Agreement, as part of the District's license granted to the Contractor to use the Café facilities and equipment, the Caterer may use the Café to provide meal and/or catering services to not only District employees, but also third parties/members of the public. The Café facilities shall generally be available to the Caterer for use for such third party services from the hours of 6:00 AM to 4:00 PM, Monday-Friday, and/or as otherwise mutually agreed to by the parties. However the District reserves the right to use the Café area if needed for District purposes upon reasonable notice to the Caterer.

b. **[ADDITIONAL REQUIREMENTS TO BE NEGOTIATED AS NEEDED]**

EXHIBIT "B"

DESCRIPTION/DEPICTION OF CAFÉ FACILITIES

2,012 square feet, commonly referred to as the "Café", located at 15250 Avenue of Science, San Diego, California 92128-3406. The following District Owned equipment can be available for use by the awarded Contractor:

<u>Item Description</u>
Small Refrigerator – Beverage Air
Walk-in Cooler – Commercial Cooling
Rolling Cooler – Commercial Cooling
Deep Fryer – Pitco – Solstice Supreme
Grilles – Montague
Oven – Blodgett
Ice Maker – Manitowoc
Freezer - Randell
Slicer – Globe
Mixer – Globe
Front Serving Line (ALL) – ESE
Vending Machines*
Coffee Maker*
Fountain Drink*

EXHIBIT “C”

CATERED FOOD SERVICE PROCESS AND RATES

EXHIBIT "D"

**CONTRACTOR'S CERTIFICATE REGARDING
WORKERS' COMPENSATION**

California Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his/her employees.

I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this contract.

Proper Name of Proposer

Signature of Authorized Agent/Officer

Date_____

In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the California Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

EXHIBIT "E"

CONTRACTOR CERTIFICATION REGARDING EMPLOYEE BACKGROUND CHECKS

With respect to the Contract dated _____, 2021 between Poway Unified School District ("District") and **[TO BE INSERTED]** ("Contractor"), Contractor hereby certifies to the District's Governing Board that it has completed the criminal background check requirements of Education Code Section 45125.1 and that none of its employees that may come in contact with District 's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Authorized Representative:

By: _____

Its: _____