



UNIVERSITY OF CENTRAL FLORIDA

**Board of Trustees  
Finance and Facilities Committee Meeting  
January 24, 2019  
11 a.m.  
UCF Rosen College of Hospitality Management  
Conference call in phone number 800-442-5794, passcode 463796**

**REVISED AGENDA**

- I. CALL TO ORDER** Alex Martins  
*Chair, Finance and Facilities Committee*
- II. ROLL CALL** Tracy D. Slavik  
*Coordinator of Administrative Services  
for Administration and Finance Division*
- III. MEETING MINUTES**
- [Approval of the December 12, 2018,](#) Chair Martins  
Finance and Facilities Committee meeting  
minutes
- IV. NEW BUSINESS** Chair Martins
- Parking, Housing, and Health Kathy Mitchell  
Auxiliary Facilities Operating *Interim Chief Financial Officer*  
Budgets (FFC-1) Tracy Clark  
*Associate Provost for Budget, Planning, and  
Administration and Associate Vice President  
for Finance*  
Christina Tant  
*Assistant Vice President and University  
Controller*

- Concessions Services for UCF Convocation Corporation (FFC-2)

Kathy Mitchell  
Greg Robinson  
*Assistant Vice President for Procurement Services*

- Subway Contract Amendment (FFC-3)

Misty Shepherd  
*Interim Vice President for Administration and Finance*  
John C. Pittman  
*Associate Vice President for Debt and Revenue Management*  
Ronnie Lamkin  
*General Manager, UCF Convocation Corporation*

**V. OTHER BUSINESS**

Chair Martins

**VI. CLOSING COMMENTS**

Chair Martins



UNIVERSITY OF CENTRAL FLORIDA

Board of Trustees  
Finance and Facilities Committee Meeting  
President's Boardroom, Millican Hall, 3<sup>rd</sup> Floor  
December 12, 2018

## MINUTES

### CALL TO ORDER

Trustee Robert Garvy, vice chair of the Finance and Facilities Committee, called the meeting to order at 8:30 a.m. Vice Chair Garvy requested that in the absence of Chair Alex Martins, and given the difficulty of chairing a meeting over the phone, that the meeting be turned over to Board of Trustees Chairman Marcos Marchena.

Committee member David Walsh was present. Committee members Joshua Bolona, John Lord, and John Sprouls attended by teleconference. Chairman Marcos Marchena was present. Trustees Ken Bradley, Joseph Conte, and Beverly Seay attended by teleconference. Trustee Bill Self was present.

### MEETING MINUTES

The minutes of the November 15, 2018 Finance and Facilities Committee meeting were unanimously approved as submitted. Trustee Walsh made the motion and Trustee Lord seconded.

### NEW BUSINESS

#### E&G Carryforward Spending Plan (FFC-1)

Kathy Mitchell, Interim Chief Financial Officer, requested approval of the plan for the "committed" portion of the university's remaining 2017-18 Education & General (E&G) carryforward funds. President Dale Whittaker stated this is the first time that the Board of Governors has requested each university present to its board of trustees a plan for how it is using and budgeting the carryforward from E&G funds.

Whittaker noted this is an opportunity to review the way we budget these carryforward funds to make sure funds are used for their highest purpose from a university perspective, that they are used appropriately, and that they are used in a timely way. The plan for spending E&G carryforward funds is structured following BOG guidelines. It covers specific plans for the carryforward dollars not contractually committed or otherwise encumbered by a purchase order or another mechanism. These spending recommendations reflect UCF's pursuit of excellence, as well as university priorities that will have a great institutional return on investment, specifically accelerating the university toward preeminence and moving up in performance funding.

Whittaker shared that the university is allocating \$40 million in other carryforward funds for scholarships that will support student success. This strategic move will help the university advance in several of its preeminence and performance funding metrics, including four-year graduation rates, first-year retention rates, and lowering the net cost of a college degree. This new funding will significantly increase the amount that UCF provides in scholarships, grants, fellowships, and assistantships to undergraduate and graduate students.

The \$40 million, named the Constellation Fund, will augment a variety of existing funds. Whittaker is very proud that this record investment in institutional aid reflects the university's commitment to student success. The multiple scholarship opportunities that this fund will offer will continue to help the university attract the highest-potential student, even as we see the quality of the incoming freshmen class continue to increase, as well as improve on our newly achieved 90 percent first-year retention rate.

The initiative is also a reflection of the board's deep value for balancing affordability with excellence in providing students the highest-quality experience. Provost Elizabeth Dooley is leading a task force of students, faculty, and academic leaders to decide how the scholarship funds will be used. The plan will be ready early next year.

Mitchell said in its October meeting, the Board of Governors outlined the charge that each university board of trustees look at the committed section of E&G carryforward funds that remains from last year and approve a plan for expenditure of those funds. The BOG gave specific categories to consider: critical deferred maintenance of existing facilities, critical campus infrastructure, campus safety and security, student welfare, student financial aid, any board-adopted SUS operating legislative budget request issues, academic and student affairs, and information technology.

Each university was asked to take its August 21, 2018 E&G carryforward balance and roll forward to a date of its own choosing (UCF chose November 30, 2018). After subtracting expenditures, encumbrances, and contractual obligations that occurred between August 21 and November 30, 2018, they arrived at a new E&G carryforward balance.

Mitchell explained that Attachment A contains those details and pointed out this only applies to the main campus. The medical school and Florida Center for Students with Unique Abilities items have separate legislative appropriations, but they have no funds remaining in the committed section.

Items A through D contain information that was previously provided to the BOG. Item A reflects the cash balance on June 30, 2018; Item B reflects expenditures between June 30 and August 21, 2018; Item C is any encumbrances or purchase orders through August 21, 2018; and Item D is the remaining balance after subtracting B and C from A, arriving at the E&G carryforward balance of \$118 million.

Mitchell then reviewed the next section, which is a summary of what happened from August 21 through November 30, 2018: \$40 million allocated to fund the Constellation Fund, and \$20 million allocated to fund critical deferred maintenance for a dozen projects all under the \$2 million minor projects threshold.

The third item includes the normal cash flow and purchasing cycles, as well as other big items. First, they added back to the E&G carryforward balance the \$38.2 million reimbursement for the construction of Trevor Colbourn Hall, \$13.8 million for eight additional repair and renovation projects, and \$32.4 million related to those same eight projects for cash that had been transferred to but not spent for those projects (they are now being paid for by Auxiliary funds). All of those funds will remain pending the release of the Auditor General's final report and Bryan Cave's investigative report.

They also added \$12.9 million in unrealized gains on E&G investments that the university recorded and budgeted. The university still has sufficient reserves to cover market fluctuations.

The university spent \$5 million for research at the BRIDG facility in Osceola County, \$5 million for deferred maintenance allocated by the University Budget Committee in July 2018, \$11 million for scholarships, and \$24.6 million in normal purchasing cycle transactions.

This left approximately \$111 million in the E&G carryforward balance as of November 30, 2018.

Trustee Lord asked if \$20 million for critical deferred maintenance would cover the university's needs in that area. Misty Shepherd, Interim Vice President for Administration and Finance, said the total amount for critical deferred maintenance across campus is estimated at \$165 million, and the \$20 million is to meet the most critical needs of projects under the \$2 million minor projects threshold.

Chairman Marchena said we have two limitations: one is the amount of money, and the other is the \$2 million dollar maximum per project that we can use from those funds. The \$20 million reduces the deferred maintenance total to \$145 million.

Trustee Walsh said it might be useful to show the inputs the Board of Trustees made to re-up E&G funds for Trevor Colbourn Hall, the \$13.8 million for other capital projects, and the \$32 million for the funds transferred but not spent. Mitchell handed out a summary of those transactions and noted that the summary would be added to the agenda item. Walsh also asked to clarify that the trustees were being asked to approve all of Attachment A. She said that only the approximately \$20 million highlighted in the green box on the attachment (Section F commitments) is what the trustees are being asked to approve today.

Trustee Self asked if there was a timeframe to spend the \$40 million in the Constellation Fund. Mitchell said we have three to five years per the BOG, and we have confirmed with Student Financial Assistance we can record it in a four-year allocation. He added he supports student scholarships but does not want to spend all \$40 million in one year. Mitchell said the task force led by Provost Dooley will make the determination on how to spend the money.

Trustee Conte asked when did the \$2 million threshold for capital projects go into effect. Chairman Marchena clarified Trustee Conte was asking why there is a \$2 million-dollar limit and said staff will research and make available when known.

Mitchell continued to Section E of the attachment and said the university has required restricted and contractual obligations of approximately \$90 million. That includes our 5 percent statutory

reserve requirement of almost \$32 million and another set of restricted and contractual obligations of \$58 million.

That leaves the roughly \$20.5 million in Section F. Using the BOG's broad categories, the first one of which is academic and student affairs, they allocated \$9.3 million for faculty research support (which includes first-year salaries for principal investigators and research staff, research equipment, some travel to conferences, and essential administrative support), \$5.6 million for faculty recruitment and start-up (which includes the 400 new line hires requested by the president, some of the faculty clusters, and the diversity hire initiative), and \$3.4 million for UCF Downtown for operating and minor capital projects that are all one-time expenses associated with the campus opening.

Under the student welfare category, \$1.1 million is for the digital learning course redesign initiative, \$1 million for undergraduate and graduate student support (including student success, retention, and graduation initiatives, as well as support for the Graduate Student Center, graduate assistantships, and the parental leave program).

Having fully committed that \$20.5 million, that leaves Section G (Available E&G Carryforward as of November 30, 2018) at \$0.

Trustee Walsh asked if the board needed to approve the \$40 million for the Constellation Fund. Scott Cole, Vice President and General Counsel, said no because this is an internal allocation of money, not a capital project or contractual obligation.

Trustee Bolona asked for Section F if the two main categories (academic student affairs and student welfare) were BOG mandated. Mitchell said they were encouraged to focus on eight specific categories, and those are two of the eight. Trustee Bolona then asked how the team chose those two categories and what percentage to give to each. Mitchell said as of June 30, 2018, all of those funds had been allocated to the departments and units, and the cash was still present. The team went back to the departments as of November 30, 2018 and asked what the plans were for the remaining funds. Because the university had already committed \$40 million to the Constellation Fund and \$20 million to deferred critical maintenance, when looking at the rest of the eight categories, these two jumped out from the units' plans as what to focus on to continue on our path to preeminence.

Trustee Bolona asked for the categories that are not being included, and Mitchell said critical campus infrastructure, campus safety and security, any board-adopted SUS operating legislative budget request issue, and information technology. Mitchell said all of those categories are within the \$58 million in the restricted and contractual obligations in Section E, particularly information technology.

Trustee Self asked to clarify where funding for a new line faculty hire would come from, and where funding for current faculty would come from. Mitchell said if a contract has been signed the funding is from "contractual obligations," whereas a new hire that is in process is shown in the "faculty recruitment and start-up" in Section F.

Provost Dooley said they are meeting with the deans next week and have a sensitivity to faculty members coming in and the start-up packages. They want to mitigate the impact as much as possible.

Trustee Walsh asked in light of concerns over the lack of teaching faculty, does the plan include allocations to teaching faculty versus research faculty and balancing those critical needs. Provost Dooley said they had conversations with the college deans to learn the colleges' needs, and decisions are made around that. There is a balance between teaching and research faculty.

Trustee Walsh added it made sense to take 10 more days to understand the E&G Carryforward Spending Plan more clearly. Chairman Marchena said the trustees were being asked to approve the \$20.5 million in the green box highlighted on Attachment A, not the overall \$80 million explained in the document.

Trustee Self said it is disappointing the BOG did not put "faculty hiring" in their list of priorities. Provost Dooley said these funds are not recurring dollars. The recurring dollars they have allocated are still in play, and they will continue their hiring pattern. What is being discussed today impacts the dollars being held for the faculty start-up. When the university achieves preeminence and is in the top level of performers, there will be additional recurring dollars coming into the university, and those are the dollars where they will make the decision to hire faculty members.

Trustee Walsh asked if they should name a placeholder for additional "teaching faculty." President Whittaker said 400 new faculty are tenure-track, meaning they are both teaching and research faculty, and they carry the bulk of the teaching commitment at the university. With the new budget model, the university moves recurring funds to the colleges if they have increased teaching demands. The design of the system, with the assumption that the tenure-track faculty are teaching and researching, will continue to grow the faculty as the student demand increases.

Mitchell said what Trustee Walsh is referring to is faculty salaries, and those come from recurring dollars. This \$5.7 million is for start-up expenses and recruiting expenses. Chairman Marchena said "teaching faculty" are likely "instructors," and start-up packages would not be part of their hire.

Trustee Bolona commented we have impacted four of the eight categories, and he wants to make sure the head of each category was offered the chance to speak for their needs. Chairman Marchena clarified another way to ask is was every category considered.

Mitchell said yes, all were considered. The August E&G carryforward balance was always evaluated by the BOG. For the past four years, all university units have been asked to provide a plan on how they will spend their carryforward funds. The following year, the university comes back to the units with that plan and reconciles them. This is not a new exercise, and carryforward information is provided to the BOG two or three times during the year.

President Whittaker added this was not a request for new projects or new commitments. The funds have been in three-year budgets and plans, just not spent. The first piece is to make sure what is in plans is actually being spent, and the second piece is to review the priorities of every unit head. The university made executive decisions on the highest priorities based on

those. The highest priority was making sure we could continue to hire the faculty we had already committed to, to take care of the pedagogical demands through the digital learning course redesign, and to take care of student support. Some things will be delayed until next year that were planned to be purchased this year, but none of these are new ideas or new items. They were budgeted for during the past three years.

Trustee Garvy made a motion to approve, with Trustee Lord seconding.

Chairman Marchena said he is pleased to move the \$40 million into the Constellation Fund and realizes how many of our metrics this will positively impact. He is comfortable with the recommendations being made as they focus on academics and student welfare.

Trustee Walsh said this information was received a day and a half ago, and he wants enough time to deliberate something this significant. He again is asking if it could wait 10 more days. He could be supportive with more time to review.

Trustee Self said one item of concern is addressing “campus safety,” and he feels this should be recognized as a critical issue. Shepherd said the \$20 million for deferred critical maintenance includes items such as lights and parking garages that incorporate campus safety.

The committee approved the plan for spending the “Committed” portion of the university’s remaining 2017-18 E&G Carryforward funds, with Chairman Marchena, Trustee Bolona, Trustee Garvy, and Trustee Lord in favor, and Trustee Walsh opposed.

The FFC meeting was recessed at 9:15 a.m. for a Board of Trustees meeting to occur. The FFC meeting began again at 9:20 a.m.

Board of Governors’ 10-Year Lookback on Source of Funds for Capital Projects (INFO-1)

Mitchell stated the report given to the Board of Governors containing their requested 10-year lookback to see if E&G funds were incorrectly used for any other capital project is now being provided as an information item. As discussed at prior meetings, it was determined Trevor Colbourn Hall was the only building where improper E&G funds were used.

Minor Amendment to Coordinate the University of Central Florida 2015-25 Campus Master Plan Update With Site Refinements (FFC-2)

Shepherd requested approval for a minor amendment to coordinate the 2015-25 Campus Master Plan Update (CMP) with site refinements made by the university since the CMP was approved by the UCF Board of Trustees on November 20, 2014.

The purpose of the amendment is to modify the Capital Improvements List (Attachment B) to update names and funding sources and to remove one project (Trevor Colbourn Hall), change the line item names for four projects, and change the funding source indicated on eight of the projects; annotate the Urban Design and Capital Improvements Map (Attachment C) to illustrate the proposed changes to the Capital Improvements List; and revise the Future Land Use Map (Attachment D) and the Recreation and Open Space Map (Attachment E) to align with site refinements. Shepherd stated the projects will be changed or removed from the Capital Improvements List when the UCF 2020-30 Campus Master Plan Update is published.



The following changes were requested to the Capital Improvements List and the Urban Design and Capital Improvements Map:

LINE	PROJECT	MODIFICATION
4	John C. Hitt Library Renovation Phase II	Funding source change
17	Colbourn Hall Renovation	Project deletion
32	Research Building I	Name change
62	Roth Athletic Center	Name change
97	Dr. Phillips Academic Commons	Name and funding source change
98	CREOL Expansion Phase II	Funding source change
99	Downtown Campus Combined Heat and Power Plant	Funding source change
103	Downtown Phase II	Name and funding source change
104	Downtown Phase III	Funding source change
105	Downtown Phase IV	Funding source change
111	UCF Solar Farm	Funding source change

The following changes were requested to the Future Land Use Map and the Recreation and Open Space Map:

- ITEM 1 - District Energy Plant IV

UCF proposes to change the Future Land Use Map and the Recreation and Open Space Map to create approximately 4.75 acres of Mixed Use land bounded by Scorpio Drive, Gemini Boulevard, the Arboretum wetlands, and Apollo Circle. The parcel is currently classified as: Recreation/Open Space (approximately 3.4 acres), Mixed Use (approximately 0.10 acres), and Parking (approximately 1.25 acres); and includes the site of District Energy Plant IV.

- ITEM 2 - New Lake

UCF proposes to change the Future Land Use Map to indicate the addition of just over an acre of lake and natural space at this site. In 2016, a parking lot adjacent to Libra Drive was removed and the area converted to a lake (storm water retention pond).

- ITEM 3 - Ara Drive

This proposal will support UCF’s effort to master plan a research neighborhood along Ara Drive and facilitate the planned growth of utility and support functions.

Trustee Walsh asked to clarify they were being asked to vote for the changes to the projects and not the projects themselves. Shepherd confirmed this is not to approve projects. Rather, it is approving name changes so the Campus Master Plan Update and Capital Improvements List have the same name for an item, or to change a funding source.

Chairman Marchena said he wanted on the record the trustees are not approving projects but only the changes requested. Any project on the Campus Master Plan Update or the Capital Improvements List that requires specific Finance and Facilities Committee and/or Board of Trustees approval will come to the committee and the board for that approval.

Cole confirmed projects need to be on the list to receive funding, but being on the list is not an approval of the project itself. Shepherd added being placed on the list represents the first step in a long process.

Trustee Walsh made a motion to approve and Trustee Bolona seconded. The committee unanimously agreed to approve a minor amendment to coordinate the 2015-25 Campus Master Plan Update (CMP) with site refinements made by the university since the CMP was approved by the UCF Board of Trustees on November 20, 2014.

Minor Amendment to Align the University of Central Florida 2015-25 Campus Master Plan Update (FFC-3)

Shepherd presented for approval a minor amendment to align the UCF 2015-25 Campus Master Plan Update (CMP) with the Five-year Capital Improvement Plan for 2019-20 through 2023-24 (CIP).

The purpose of the proposed amendment is to align the CMP with the CIP that was approved by the UCF Board of Trustees on July 19, 2018. The following projects that were on the CIP will be added to or revised on the CMP by modifying the Capital Improvements List, Urban Design and Capital Improvements Map, Future Land Use Map, and Recreation and Open Space Map.

- Adding two new projects on the Main Campus
  1. Dining, Housing, and Residence Life and Creative School for Children Partnership Building
  2. The Ara District Energy Plant
- Revising an existing project on the Main Campus
  3. Research II (added to the CMP on January 13, 2017)
    - Aligning the project name to match the CIP
- Adding one new project on the Rosen campus
  4. Rosen Parking Garage

Trustee Self asked if the Lake Nona campus, Rosen campus, Downtown campus and main campus have their own detailed Campus Master Plans. Cole said only the main campus has an official campus master plan. Items for the other campuses are provided for information only, and those campuses follow applicable city and/or county regulations.

Chairman Marchena said the campus master plan is used in two ways. The state allows universities to permit their own projects as 1) an indication of where they plan to go and 2) a legal step in the process of projects being approved and permitted. The master plan information for the other campuses is just a guide and does not serve a permitting approval purpose.

Trustee Walsh asked if projects on the Campus Master Plan can be funded externally if sources become available. Shepherd confirmed.

Trustee Walsh made a motion to approve and Trustee Bolona seconded. The committee unanimously approved the minor amendment to align the UCF 2015-25 Campus Master Plan Update (CMP) with the Five-year Capital Improvement Plan for 2019-20 through 2023-24 (CIP).

Subway Contract Amendment (FFC-4)

Shepherd requested approval of up to two five-year retail lease renewal options for Subway at Knight's Plaza. This item is being brought to the board because of the term length of the amendment. The two five-year renewal options will allow Subway to refresh its current space as required by the franchise and amortize that cost over time. No university funds will be used in the refreshing of the space.

Chairman Marchena asked for the franchise's investment in the facility. Ronnie Lamkin, General Manager for the UCF Convocation Corporation, said no dollar amount has been determined. At this stage, the franchisee has only asked for the two five-year renewals to receive the appropriate return on investment.

Chairman Marchena asked when the term expires. Lamkin said 2022. Trustee Walsh asked if they have time to develop an investment plan before a renewal decision, and Lamkin confirmed.

Chairman Marchena said he does not think the two five-year renewal options are warranted for a refurbishment investment given what time remains on the current term. He does not want to give an additional 10 years to a tenant until their investment is known. He recommended tabling the item until the level of investment is available. Lamkin said the franchisee asked for this now and is aware the trustees must make the decision.

Trustee Garvy made a motion to table the item and Trustee Walsh seconded. The item will be brought back to a future Finance and Facilities Committee meeting.

Direct Support Organizations' 2018-19 First-Quarter Financial Reports (INFO-2)

Mitchell presented as an information item the first-quarter financial reports for the following DSOs: UCF Athletic Association and Stadium Corporation, UCF Convocation Corporation, UCF Finance Corporation, UCF Foundation, UCF Limbitless Solutions, UCF Research Foundation, and Central Florida Clinical Practice Organization.

Trustee Garvy asked for explanation of the \$865,000 variance on Total Debt Service on the UCF Athletics Association and UCF Stadium Corporation report. Brad Stricklin, Executive Associate Athletics Director and Chief Financial Officer, and Bert Francis, Assistant Controller, said the prior year was reported on an accrual basis while the current year was reported on a cash basis. Stricklin summarized this a typo that needs correcting. A corrected report was sent to the trustees.

Trustee Garvy also asked for an explanation of the negative \$322,000 variance on the Net Operating Income line. Stricklin said that figure is because employee compensation bonuses were paid earlier than normal, and the student fee allocation is behind budget. Trustee Garvy asked if there was anything out of the ordinary. Stricklin said no. They will be ahead of projected

ticket sales for the remainder of the year, and they are projecting contributions including premium seating going into next year trending higher.

Trustee Garvy also asked for the reason for the variance under Unrestricted Expenses on the Development, alumni relations, and operations line on the UCF Foundation report. Hina Behal, Senior Director of Reporting, Advancement and Alumni Affairs, said that is a typo, and a “7” was missing from the \$477,741 stated. It should have read \$4,777,741. A corrected report was sent to the trustees.

Trustee Self asked for an explanation of the Faculty Salaries and Benefits versus the Staff Salaries and Benefits on the Central Florida Clinical Practice Organization report. Steve Omli, Assistant Dean of Medical School Finances, said Faculty Salaries and Benefits are for the doctors and physicians, while Staff Salaries and Benefits are for administrative staff. Omli added having additional providers has increased their Patient Care revenue.

#### University Draft Audited Financial Report 2017-18 (INFO-3)

Christina Tant, Assistant Vice President and University Controller, presented the University Draft Audited Financial Report 2017-18 as an information item. Tant said this is under review by the Auditor General. The university has been impacted by a new accounting standard adopted during the fiscal year, GASB 75, which changed the way employers are required to account for post-employment benefits. Employees who retire from the university are eligible to participate in the state’s health insurance plan at the same cost as active employees. Because premium costs for retirees are typically higher than for active employee, the university effectively subsidizes that cost by offering retirees the same rates as employees.

Previously, accounting standards allowed post-employment benefits to be recognized over a 30-year period. GASB 75 requires it to be recognized in full in the current year.

The amounts recorded on the financial statements are based on an actuarial study by the State of Florida Department of Management Services. Post-employment benefit liability was calculated at the beginning of the year at \$322 million, which is a \$220 million increase in liabilities, causing a decrease in the net position reported under the old standard. The Division of State Group Insurance has elected not to create a trust for these obligations, so the liabilities are on a pay-as-you-go basis.

Chairman Marchena asked if the decrease in net position of \$182 million was primarily a result of the accounting change. Tant confirmed. He also asked will the university see a similar decrease next year. Tant said no, financials are now relatively consistent.

Trustee Walsh asked if the cumulative post-employment benefits liability is now on the books. Tant said yes. Tracy Clark, Associate Provost for Budget, Planning, and Administration and Associate Vice President for Finance, added the university’s net position is still strong, even after paying for the post-employment benefits and pension liability.

#### University Operating Budget Report Quarter Ended September 30, 2018 (INFO-4)

Clark presented the university operating budget for the quarter that ended September 30, 2018 as an information item. Clark said the one anomaly was a capital projects correction shown in the

revenue section of Educational and General. This is detailed in the explanations and was covered by Mitchell during the E&G carryforward discussion.

Chairman Marchena asked if that was the only anomaly, and Clark confirmed.

University Investments Presentation and Investments Quarterly Report Ended September 30, 2018 (INFO-5)

Clark and Dave West, the UCF investment advisor for &Co, gave a presentation on the university's investment policy and presented the investments quarterly report for the period ended September 30, 2018, as an information item.

The presentation covered the governing policies for UCF's investments, cash and investments as of September 30, a breakdown of the managed pool program, the current operating funds general investment structure and structure since its inception, the current managers by pool, an in-depth analysis of each of the pool managers, a graph of the structured investment portfolio versus net contributions, and the structured investment portfolio investment policy compliance checklist.

Trustee Walsh asked if the State Treasury Special Purpose Investment Account (SPIA) holds E&G carryforward funds. Clark confirmed and added SPIA is for the entire university and contains auxiliary cash balances including debt and interest reserves, repair and replacement reserves, funds for parking and other large auxiliaries that are required by bonds, their operating cash, contract and grant funding, and E&G funding.

It also holds cash for the university DSOs where Finance and Accounting performs their accounting (UCF Convocation Corporation, UCF Finance Corporation, UCF Limbitless Corporation, UCF Research Foundation, and UCF Stadium Corporation,). The state minimum reserves of \$32 million also are in this account.

West said for the current managers by pool slide, the Total Equity Allocation is now 12.5 percent after a rebalancing in October. Chairman Marchena asked did we calculate the increase in risk when Pool I was closed and those funds were reallocated to Pools II and III. West confirmed and said they completed a review at that time. The majority of the funds went to the bonds manager Sawgrass, all of which is fixed income.

Clark added they also were comfortable moving out of the money market because our SPIA balances grew, so the university's need for instant liquidity was satisfied. There was no need to have \$60 million in money market for quick liquidity. The whole portfolio is liquid.

Trustee Garvy remarked Galliard Capital Management's senior leadership is aging, but they also have grown substantially. Both of these circumstances can cause difficulties to arise. Sawgrass, however, is very different from Galliard. They are very small with only four individuals, and they have been inconsistent in their short-term and long-term performance.

He asked how West and team are assessing the funds managers, and are they being proactive with necessary changes. West confirmed and said his research team has dedicated analysts who stay in touch with managers at minimum on a quarterly basis and are inside the shops and the processes to make sure expectations are met.

He added they have been monitoring Galliard for several years and are comfortable they have a workable succession plan in place. They are team-oriented, and the departure of a single portfolio manager is not disruptive to their program. He also said their assets have grown considerably, but given the high quality and liquid securities the manager is investing in, and the growth of the underlying fixed income markets, they are comfortable with Galliard and have not seen a decline in performance.

Sawgrass is a boutique where we receive customized management services. If its lead portfolio manager were to retire, West and his team would be before the trustees making a recommendation for change. He also said Sawgrass' performance has been a function of their interest-rate anticipation, and they have been on the wrong side of a few interest calls, leading to volatility.

Trustee Garvy also suggested Sawgrass be put on an active watch basis, because their strategy has not added alpha net of fees since 2013. West clarified Sawgrass has been able to deliver for UCF performance consistency and said the comments Trustee Garvy referenced are for the broader macro strategy. Trustee Garvy said with that information he is satisfied, and there is no need to move forward.

Chairman Marchena said Trustee Garvy's comments as a general principle are solid, and the trustees expect West to come to them if a manager requires action. West added as part of their due diligence, regardless of what strategy the manager is implementing in their product offering, if &Co determines that a manager needs to be removed, they will come before the trustees with that recommendation.

Trustee Garvy noted when preparing manager summaries, it would be helpful if the correct strategy is used for the commentary and analysis to prevent raising concerns that are not warranted.

Clark pointed out on the structured investment portfolio investment policy compliance checklist, the university is now in compliance with the Pool III Equity requirement that investments in equity securities shall not exceed 20 percent of the market value of Operating Pool III's assets. This was corrected with the October rebalancing.

She also said they receive monthly flash reports provided by &Co. October had a loss of almost \$6.5 million, but in November they gained back about \$2.2 million. The chart on page 140 that shows our balance at \$284 million is now about \$280 million. West said in October both short-term and long-term debt lost on a total-return basis, and the aggregate bond index declined 1.5 percent. Equities also corrected during the month. All available investment avenues were unusually off.

Clark said, however, even with both bonds and equities having the large decline, the overall portfolio is still within a safe return and projected tolerance.

Trustee Garvy stated it is obvious this has been a tremendously successful program for UCF since its inception in 2010. A significant amount of credit needs to go to Bill Merck and the Administration and Finance group, as well as West and his team. The kind of graph shown going up for eight years running is extremely rare. We must accept with a program like this there will

be periods where that graph goes down. Over the long-term, it should shape upwards but will have ups and downs. Staying with a program like this is important in the long-term because trying to guess when to get out and get back in only amplifies the complications and has not shown to be a productive strategy. He gives his compliments to both Bill Merck, Clark, and that whole team, and West and his team.

Five-year Internal Capital Plan 2019-23 (INFO-6)

Mitchell presented the Five-year Internal Capital Plan 2019-23 as an information item. The trustees had previously requested this report. The Five-year Internal Capital Plan was developed with input from colleges and units on what they need to be successful for our students. With that, they created this list of facilities projects. Moving forward, this list will be used to prepare the Capital Outlay Budget and Five-year Capital Improvement Plan.

This is being provided now only for information. It will be discussed as it relates to the Capital Outlay Budget and Five-year Capital Improvement Plan after the first of the year.

Mitchell said under “Academic” in the Deferred Maintenance and Capital Renewal section, the \$4 million for the Visual Arts HVAC is now on hold. They are waiting for the BOG to confirm if the equipment needed can be purchased with E&G funds.

Trustee Self said he appreciated this being brought to the board and the detail behind the descriptions of the buildings. He also stated the minutes for the previous Finance and Facilities Committee meeting were very detailed, and this is a significant occurrence. He would like to see that throughout our work with the board.

Chairman Marchena said the minutes style has been changed from the previously used summary style to a more detailed style, as the summary style is not necessarily adequate for keeping track of why decisions were made.

Trustee Garvy asked why the Deferred Maintenance Capital Renewal total was \$90 million when it was mentioned earlier in the meeting the actual deferred maintenance costs required is closer to \$200 million. Clark said this is an internal list and does not include every project that needs maintenance. They did not want this to be a carbon copy of the Five-year Capital Improvement Plan, but rather contain larger and more significant items, and what they felt the university could actually accomplish within the five years.

Chairman Marchena requested a list of all the projects that require deferred maintenance funding. Trustee Garvy said it is important to know the total number required for deferred maintenance so someone does not see this list and erroneously think the total is \$90 million, when in reality it is twice that.

Chairman Marchena adjourned the Finance and Facilities Committee meeting at 10:54 a.m.

Reviewed by:

\_\_\_\_\_  
Marcos Marchena  
Chairman, UCF Board of Trustees

\_\_\_\_\_  
Date

Respectfully submitted :

\_\_\_\_\_  
Grant Heston  
Associate Corporate Secretary

\_\_\_\_\_  
Date



**ITEM: FFC-1**

**University of Central Florida  
Board of Trustees  
Finance and Facilities Committee**

**SUBJECT:** Parking, Housing, and Health Auxiliary Facilities Operating Budgets

**DATE:** January 24, 2019

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Material Forthcoming

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**Supporting documentation:** Forthcoming

**Prepared by:** Christina Tant, Assistant Vice President and University Controller

**Submitted by:** Tracy Clark, Associate Provost for Budget, Planning, and Administration  
and Associate Vice President for Finance

ITEM: FFC-2

**University of Central Florida  
Board of Trustees  
Finance and Facilities Committee**

**SUBJECT:** Concessions Services for UCF Convocation Corporation

**DATE:** January 24, 2019

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**PROPOSED COMMITTEE ACTION**

Approve the attached agreement with Spectra Food Services and Hospitality for concessions food services for the general admissions seating and areas at the CFE Arena and Venue facilities.

**BACKGROUND INFORMATION**

The approval to award this agreement to Spectra Food Services and Hospitality was approved by the Board of Trustees at the September 27, 2018, board meeting. The initial agreement shall be for five years, four months; February 1, 2019 through June 30, 2024. The parties shall have the option to renew the Agreement for one five-year term.

The current temporary concessions food service contract for the CFE Arena and Venue expires upon the execution of this new agreement, stemming from a competitive procurement process (Invitation to Negotiate). This agreement will include capital dollars (provided by the awarded contractor) to improve concession spaces at the CFE Arena and Venue while also offering substantial revenue sharing through commissions. No UCF funds will be used for the facility improvements. This agreement does not include servicing the premium seating areas nor does it include catering services.

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**Supporting documentation:** Attachment A: Contract  
Attachment B: Contract Summary

**Prepared by:** Greg Robinson, Assistant Vice President for Procurement Services

**Submitted by:** Greg Robinson, Assistant Vice President for Procurement Services

Attachment A

**CONTRACTUAL AGREEMENT**

**For**

**INVITATION TO NEGOTIATE (ITN) #1724NCSA**

**ENTITLED: CONCESSIONS FOOD SERVICES MANAGEMENT AGREEMENT**

**Between**

**UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES**

**AND**

**OVATIONS FOOD SERVICES, L.P. D/B/A SPECTRA FOOD SERVICES & HOSPITALITY**

This Contractual Agreement for Invitation to Negotiate (ITN) #1724NCSA Entitled: Concessions Food Services Management is entered into and effective as of February 1, 2019, by and between the University of Central Florida Board of Trustees (“University” or “UCF”) and Ovarions Food Services, L.P. d/b/a Spectra Food Services & Hospitality (“Spectra” or “Concessionaire”). The parties agree as follows:

WHEREAS, Spectra is in the business of managing and operating food and beverage concessions services at indoor and outdoor single and multi-purpose facilities; and

WHEREAS, University desires to grant to Spectra the exclusive right and privilege to manage and operate the food and beverage concessions services at the facilities identified herein; and

WHEREAS, Spectra desires to accept the right and privilege to exclusively manage and operate such concessions services at the facilities, subject to the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

**1. ACKNOWLEDGMENT.** Concessionaire acknowledges that:

- A. The University is a public entity of the State of Florida;
- B. The University is exempt from federal and Florida taxes;
- C. Except for its employees acting within the course and scope of their employment, UCF shall not indemnify any entity or person and, then, such indemnification is limited to the express terms of §768.28, Florida Statutes. The State of Florida is self-insured to the extent of its liability under law and any liability in excess of that specified in statute may be awarded only through special legislative action. Accordingly, UCF’s liability and indemnification obligations in this Agreement shall be effective only to the extent expressly required by §768.28, Florida Statutes. Any provision requiring UCF to provide insurance coverage other than the State of Florida self-insurance shall not be effective.

<b>TABLE OF CONTENTS</b>
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		PAGE
SECTION 1:	CONTRACT STATEMENT AND FACILITIES/LOCATIONS .....	4
SECTION 2:	GENERAL CONDITIONS	
	Definitions .....	5
	2.1 Force Majeure .....	8
	2.2 Indemnification, and Insurance .....	8
	2.3 Term Of Contract .....	11
	2.4 Termination Of Contract .....	12
	2.5 Assignment And Amendment Of Contract .....	12
	2.6 Independent Parties .....	13
	2.7 Records .....	13
	2.8 Public Records .....	13
	2.9 Public Records, Service Contracts, Compliance 119.0701, FS .....	13
	2.10 Severability .....	14
	2.11 Notices .....	14
	2.12 Governing Law And Venue .....	15
	2.13 Liaison .....	15
	2.14 Subcontracts .....	15
	2.15 Employment Of UCF Personnel .....	15
	2.16 Conflict Of Interest .....	16
	2.17 Equal Opportunity Statement .....	16
	2.18 Waiver Of Rights And Breaches .....	16
	2.19 Headings Not Controlling .....	17
	2.20 Employee Involvement / Covenant Against Contingent Fees .....	17
	2.21 Employment Of Aliens .....	17
	2.22 Site Rules And Regulations .....	17
	2.23 Travel Expenses .....	17
	2.24 Annual Appropriations .....	18
	2.25 Taxes .....	18
	2.26 Use Of Contract By Other Governmental Agencies .....	18
	2.27 Public Entity Crimes .....	18
	2.28 Intellectual Property .....	18
	2.29 Export Control .....	19
	2.30 Parking .....	20
	2.31 Compliance .....	20
	2.32 Billing .....	20
	2.33 No Joint Venture .....	21
	2.34 Leased Equipment .....	21
	2.35 MSDS .....	21
	2.36 Non-Performance .....	21
	2.37 Vietnam Veterans Readjustment Act of 1974 .....	22
	2.38 State Licensing Requirements .....	22
	2.39 Family Educational Rights And Privacy Act .....	22
	2.40 Smoke Free Policy .....	22
	2.41 Contractual Precedence .....	23

SECTION 3: CONTRACT REQUIREMENTS

3.1 Operations ..... 24

3.2 Products and Services ..... 24

3.3 Alcoholic Beverages ..... 26

3.4 Advertising - Marketing..... 26

3.5 Exclusive Use Agreements ..... 27

3.6 Basic Utilities..... 29

3.7 Additional Utilities..... 30

3.8 Environmental/Sustainability Practices ..... 30

3.9 Licensing, Permits, taxes ..... 30

3.10 Sanitation and Food Safety ..... 30

3.11 Concessionaire Obligations..... 31

3.12 University Obligations..... 34

3.13 Customer Service & Quality Control ..... 35

3.14 Staffing/Personnel ..... 36

3.15 Background Checks ..... 37

3.16 Food and Beverage Price Adjustment Policy..... 37

3.17 Tender Types..... 39

3.18 Technology Compliance..... 39

3.19 Financial Reporting And Recordkeeping..... 40

3.20 Payment Terms..... 41

3.21 Investment Requirements..... 41

3.22 Promotionals..... 42

SECTION 4: FINANCIALS ..... 43

Signatures ..... 45

ATTACHMENTS:

Attachment A- UCF Owned and Provided Equipment ..... 47

Attachment B – General Seating Area Menu (Items and Pricing) ..... 50

Attachment C – Performance Metrics ..... 54

Attachment D - Arena Layout..... 56

**SECTION 1: CONTRACT STATEMENT AND FACILITIES/LOCATIONS**

**1.1 Contract Statement**

This Contract is to provide Concessions Food & Beverage Management Services for the General Admissions Seating/Areas at the Facilities as described herein. Specifically, this Contract provides for the rights and obligations for Concessions Food & Beverage Management Services. This Contract does not include servicing the premium seating areas nor does it include catering services.

Concession License.

The University hereby grants to Spectra the exclusive right and privilege to provide Concessions Food and Beverage Management Services for the “General Admission Seating/Areas” at the Facilities identified herein. Spectra covenants and agrees to exercise the full Concessions Food and Beverage Management Services rights granted hereunder at all events at the Facilities in such manner and with such number of personnel as are necessary to provide adequate supplies and first-class quality service of the food, beverage and other products described herein to patrons of the Facilities.

University Organizations

Note that the Facilities are managed and operated by the UCF Convocation Corporation (UCFCC). UCF appoints UCFCC as its fully authorized agent for administering, managing, and monitoring Spectra and all aspects of the Concessions Food and Beverage Management Services set forth in this Agreement.

Facilities / Locations

Concessionaire to provide Concessions Food and Beverage Management Services at the following “General Admissions Seating/Areas” at the Facilities:

- a. **CFE Arena** (herein referred to as the “Arena”) located at the Knights Plaza. <http://www.ucfknight.com/facilities/> is a 252,000 square foot multipurpose, air conditioned facility that opened in September 2007. This state-of-the-art facility houses a 17,000 square feet of exhibition space which can be used for various sports such as basketball, volleyball, wrestling, boxing, gymnastics and weightlifting. The Arena facility can also be transformed for concerts and banquets or as a convention /trade show event. Suites, meeting rooms, locker/dressing rooms, training room, and seven concession stands are also housed in the facility.
  - The Arena, can be configured to support a maximum of approximately 10,000 general-admission seats (7,000 lower, 3,000 upper). The Arena has 7 permanent concessions stands.
  - The Arena features 16 luxury boxes/suites @ up to 20 seats each, 64 loge seats, 2 loge lounges, and a club lounge that accesses 504 club seats.
- b. **The Venue** adjoins the Arena (herein referred to as the “Venue”), and is an 87,000 square foot multipurpose, air-conditioned facility that opened in August 1991. This facility houses

31,000 feet of exhibition space which can be utilized as basketball courts or adapted for various sports such as volleyball, mixed martial arts, boxing, gymnastics, and weightlifting. The Venue facility can also be transformed for concerts and banquets or for convention/trade show events.

- The Venue, can be configured to support a maximum of approximately 2,000 general-admission seats
- 2 permanent concessions stands.

<b>SECTION 2: GENERAL CONDITIONS</b>
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**2.0 Definitions**

**“Invitation to Negotiate (ITN)”** – Refers to the written solicitation (ITN #1724NCSA), used by UCF for this Contract.

**“May”, “Should”** - Indicates something that is not mandatory, but permissible, recommended, or desirable.

**“Must”, “Shall”, “Will”** - The words “shall,” “must,” or “will” are equivalent and indicate mandatory requirements or obligations.

**“Proposal” or “Offer”** - The executed best and final offer submitted by Spectra in response to this ITN and intended to be used as a basis for negotiations and award of this Contract.

**“Response”** - The entirety of the Spectra’s response submitted to the ITN, including any and all supplemental information submitted, including without limitation, the Offer.

**“UCF Contract Administrator”** - The University’ designated liaison who oversees the Concessionaire’s performance. In this matter, the UCF Contract Administrator will be the UCF Convocation Corporation General Manager or his/her designee.

**Definitions specific to this Contract**

**“Accounting Period”** shall refer to each 4 or 5-week period during the Term ending on the last Wednesday of each month, except for the month of December, which shall end on December 31.

**“Agreement Year” or “Contract Year”** shall refer to the period between February 1, 2019 and January 31, 2020, and every February 1st through January 31st for every year thereafter until the Agreement terminates or expires.

**“Alcoholic Beverages”** shall refer to all alcoholic drinks, spirits, beers and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.

**“Alcohol Sales”** shall refer to the sale of Alcoholic Beverages with respect to the General Admission Seating/Areas (such as, by way of example only, sales from permanent or

portable concessions stands or roving vendors to individual customers (including, without limitation by means of “hawking”)) provided that Alcohol Sales shall not include Subcontractor Sales. University may limit the areas that hawking is permitted from time to time.

“**Branded Products**” shall refer to those food and beverage items which are advertised, marketed and sold as part of a franchise or license agreement.

“**Buyout Amount**” shall have the meaning given to such term in Section 3.21.

“**Commission**” shall refer to the percentage of Gross Receipts paid to the UCF in accordance with Section 4 of this Agreement.

“**Concession Sales**” shall refer to all sales of food and beverage with respect to the General Admission Seating/Areas (such as, by way of example only), sales from permanent or portable concession stands or roving vendors to individual customers (including, without limitation, by means of “hawking”) provided that Concession Sales shall not include Subcontractor Sales or Alcohol Sales. University may limit the areas that hawking is permitted from time to time.

“**Concessionaire Marks**” means all Marks owned, controlled, or cleared for use by or on behalf of Concessionaire.

“**Concessions Food and Beverage Management Services**” or “**Services**” shall refer to the business of managing and providing (or causing to provide) Concessions Sales and Alcohol Sales in the General Admission Seating/Areas.

“**Direct Operating Costs**” shall refer to the actual out-of-pocket costs of the Concessionaire that are borne by Concessionaire in order to perform the Services. These costs include the actual expense of the product including corporate rebates, on-site payroll, payroll taxes, fringe benefits, and other operating expenses, such as cleaning and office supplies.

“**Equipment**” shall refer to all furniture and machinery, except Smallwares and Leasehold Improvements, used for the receiving, storing, transporting, preparing, merchandising, selling and accounting of product solely in connection with the provision of the Services.

“**Facility**” or “**Facilities**” shall refer to the Arena and the Venue.

“**Food and Beverage Areas**” shall refer to the following areas of the Facilities associated with food and beverage concessions for the General Admission Seating/Areas: concession stands, customer serving locations, food preparation areas, vendor commissaries, kitchen and warehouse facilities, and other areas related to the foregoing and/or reasonably required by Spectra to perform the Services at the Facilities.

“**General Admission Seating/Areas**” shall refer to all public areas of the Facilities, including, without limitation, seating areas, common areas, walkways; provided however, that General Admission Seating/Areas shall not include clubs, club seats, suites, hospitality boxes, cabanas, luxury boxes, or any other similar such seating/areas serving premium food.



**“Gross Receipts”** shall mean the total of all amounts received by Concessionaire from the operation of the Services, whether such amounts are evidenced by cash, check, credit, charge account, exchange or otherwise, less (i) retail sales tax and other direct taxes imposed upon receipts collected from the consumer, and (ii) tips and gratuities paid out to employees; provided, however, that for the purposes of calculating the Commissions to be paid by Concessionaire to the University under Section 4 below, Gross Receipts shall not include (i) receipts from sales that Spectra does at cost, or (ii) amounts received from Subcontractor Sales.

**“Gross Subcontractor Receipts”** shall mean the total of all amounts received by all Subcontractors from Subcontractor Sales, whether such amounts are evidenced by cash, check, credit, charge account, exchange or otherwise, less (i) retail sales tax and other direct taxes imposed upon receipts collected from the consumer, and (ii) tips and gratuities paid out to employees. Gross Subcontractor Receipts shall not include receipts from sales that the Subcontractor does at cost.

**“Investment”** shall have the meaning given to such term in Section 4.

**“Leasehold Improvements”** shall refer to all equipment, fixtures, furnishings, finishes and construction affixed to the Facilities, by more than an electrical or gas connection used solely in connection with the provision of the Services.

**“Marks”** means names, workmarks, trademarks, trade names, services marks, copyrights, logos, symbols, emblems, designs, images, colors, trade dress, characters, identifications, and other intellectual property.

**“Minimum Attendance”** shall have the meaning given to such term in Section 2.3.

**“Net Subcontractor Sales”** shall refer to the net proceeds paid to and received by Concessionaire from its subcontractor(s) in connection with Subcontractor Sales. The total amount of proceeds received by Concessionaire from its Subcontractors shall not be reduced in any way, nor shall any deductions be taken by Concessionaire from those proceeds for any Concessionaire related expenses, including overhead or management/supervision of subcontracted parties.

**“PPI”** shall mean the Producer Price Index for Food Manufacturing, Industry Code 311 (Series ID: PCU311---311---; Product: Food Mfg.; Base date 198412); not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Statistics, per latest index (currently available on the web site: <http://stats.bls.gov>).

**“Prior Agreement”** shall mean that certain “Food Service Management Agreement” between UCF Convocation Corporation and Ovations Food Services, L.P. d/b/a Spectra Food Services and Hospitality with a term that commenced on August 19, 2017.

**“Renter”** shall refer to any person or entity that contracts with the University, UCFCC or its designee to use the Facilities for a specific event or events.

**“Reserve Account”** shall refer to Concessionaire’s account comprised of funds retained from the allocation of 3% of Gross Receipts accrued each Accounting Period.

“**Smallwares**” shall refer to the servicewares, utensils, crockery, glassware, dishware and cutlery used by Concessionaire to perform the Services.

“**Subcontractor**” or “**Sub-Contractor**” shall refer to those companies, vendors, and/or third-parties, approved by the University, that have a contractual relationship with Concessionaire to perform certain Concessions Sales where the personnel providing the Concessions Sales are not employees of Concessionaire. Non-profit groups/organizations providing Concessions Sales for Concessionaire are not considered Subcontractors. No Subcontractor shall be permitted to perform Alcohol Sales.

“**Subcontractor Sales**” shall refer to all sales, at or from the Facilities from any Subcontractor.

“**Technology Equipment**” shall refer to items of Equipment that have a primary function related to the collection, transfer, storage, display of, or processing of data and may include items such as point of sale systems.

“**Term**” shall have the meaning given to such term in Section 2.3.

“**Total Receipts**” shall mean Gross Receipts plus Gross Subcontractor Receipts.

“**University Marks**” means all Marks owned, controlled, or cleared for use by or on behalf of the University.

“**University Provided Equipment**” shall refer to Equipment (including cooking and food-serving/warming equipment, refrigeration, shelving units, work stations/ prep-tables and all other items listed in Appendix A) that is owned by the University and provided to Concessionaire for its use in the performance of the Services. Concessionaire is required to maintain and repair such equipment in accordance with the terms and conditions of this Agreement. The University retains ownership of this equipment.

## 2.1 **Force Majeure**

No default, delay or failure to perform on the part of UCF or the Concessionaire shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond such party’s reasonable control including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, war, embargoes, fire, earthquake, acts of God, default of common carrier. In the event of such default, delay, or failure to perform due to causes beyond affected party’s reasonable control, any date or times by which affected party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of the affected party.

## 2.2 **Indemnification And Insurance**

- a. Concessionaire shall hold the University and the UCF Board of Trustees, UCFCC and the University’s and UCFCC’s officers, employees, agents and/or servants harmless and indemnify each of them against any and all liabilities, losses, actions, damages, suits, proceedings, judgments from claims, costs and expenses (including all costs for investigation and defense thereof, including but not limited to, court costs, paralegal and

expert fees and reasonable attorney's fees) which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to, or destruction or loss of any property of the University, or injury to or death of any person resulting from or arising out of or in connection with the performance of this contract, or resulting from the acts or omissions of Concessionaire, its employees, its contractors, its invitees, its agents, or of others under Concessionaire's control and supervision, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by University's negligence or by the joint negligence of University and any person other than Concessionaire, its employees, its contractors, its invitees, its agents, or of others under Concessionaire's control and supervision, or (ii) arising out of or in connection with the Concessionaire to keep, observe or perform any of the covenants or agreements in this contract which are required to be kept, observed or performed by Concessionaire, or (iii) arising out of or in connection with any action by Concessionaire, its employees, its contractors, its invitees, its agents, or of others under Concessionaire's control and supervision. University agrees to give Concessionaire reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow Concessionaire or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligation under this section, Concessionaire shall engage counsel reasonably acceptable to University. In any suit, action, proceeding, claim or demand brought in respect of which the University may peruse indemnity, the University shall have the right to retain its own counsel. The fees and expenses of such counsel shall be at the expense of the University unless (1) the Concessionaire and the University shall have mutually agreed to the contrary, (2) the Concessionaire has failed within a reasonable time to retain counsel reasonably satisfactory to the University, or (3) the University and the Concessionaire are both named parties in any such proceeding and, in the sole judgment of the University, representation of both the University and the Concessionaire by the same counsel would be inappropriate due to actual or potential differing interests between them. In the event of the above stated instances, Concessionaire shall be responsible for all of the legal fees and expenses. The indemnification provisions of this section shall survive the expiration or earlier termination of this contract with respect to any acts or omissions occurring during the term of the contract.

- b. If any part of a delivery to the University pursuant to this contract is protected by any patent, copyright, trademark, other intellectual property right or other right, Concessionaire also shall indemnify and hold harmless the University and the UCF Board of Trustees and the University's officers, employees, agents and/or servants from and against any and all liabilities, actions, damages, suits, proceedings and judgments from claims instituted or recovered against the University by any person or persons whomsoever on account of the University's use or sale of such article in violation of rights under such patent, copyright, trademark, other intellectual property right or other right.
- c. Up to the amount expressly authorized by F.S. 768.28 and the Constitution of the State of Florida, UCF shall hold the Concessionaire, its officers, employees and agents harmless from and indemnify each of them against any and all liabilities, actions damages, suits, proceedings and judgments from claims arising or resulting from the acts or omissions of University employees or the acts or omission of others under UCF's supervision and control while acting within the scope of their employment or agency.

- d. In any and all claims against the University, or the UCF Board of Trustees, or any of the University's officers, employees, agents and/or servants, by any employee of the Concessionaire, any subcontractor of Concessionaire, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of Concessionaire under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Concessionaire or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- e. No provisions of this section herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the University or UCFCC may have as to any party or person described herein.

**Insurance.** All insurance shall be procured from companies authorized to do business in the State of Florida with a minimum A.M. Best rating of A, or equivalent acceptable to the University. Proof of coverage shall be provided by submitting to the University a certificate, or certificates, evidencing the existence thereof, or binders, shall be delivered within fifteen (15) days of the tentative award date of the Contract. In the event a binder is delivered it shall be replaced within thirty (30) days by a certificate in lieu thereto. A renewal certificate shall be delivered to the University at least thirty (3) days prior to the expiration date of each expiring policy.

- a. **General Liability:** Concessionaire shall provide a Certificate of Insurance at the time of "notification of intent to award" the contract evidencing Commercial General Liability insurance coverage in force with minimum limits of \$1,000,000 (ONE MILLION DOLLARS) per Occurrence and \$2,000,000 (TWO MILLION DOLLARS) Aggregate. Upon acceptance and confirmation of coverage by University and before beginning work, and at all times during the term of the contract, Concessionaire will maintain said General Liability insurance in force and provide University with a Certificate of Insurance and endorsement naming the University of Central Florida Board of Trustees and UCF Convocation Corporation as "Additional Insured." The Certificate will provide a minimum 30 days advanced notice to in the event of cancellation.
- b. **Auto Liability:** Concessionaire shall provide a Certificate of Insurance at the time of notification of intent to award the Contract evidencing Auto Liability insurance with minimum \$1,000,000 (ONE MILLION DOLLARS) per Accident Combined Single Limit for Bodily Injury and Property Damage. Upon acceptance and confirmation of coverage by University and before beginning work, and at all times during the term of the contract, Concessionaire will maintain said Auto Liability insurance in force and provide University with a Certificate of Insurance naming the University Of Central Florida Board Of Trustees and UCF Convocation Corporation as "Additional Insured." The Certificate will provide a minimum 30 days advanced notice to University in the event of cancellation.
- c. **Workers Compensation:** Concessionaire shall provide a Certificate of Insurance at the time of notification of intent to award the contract evidencing Workers Compensation coverage consistent with Florida Statute and Employers liability no less than \$500,000 (FIVE HUNDRED THOUSAND DOLLARS) for Bodily Injury by accident, each accident, Bodily Injury by disease, each employee, and policy limit. Upon acceptance and confirmation of coverage by University and before beginning work, and at all times during the term of the contract, Concessionaire will maintain said Workers Compensation and

Employer's Liability insurance in force and provide University with a current Certificate of Insurance. The Certificate will provide a minimum 30 days advanced notice to University in the event of cancellation.

- d. **Certificates of Insurance:** The University Of Central Florida Board Of Trustees and UCF Convocation Corporation are to be named as Additional Insured on all Certificates issued. Concessionaire shall send a copy of his/her Certificate of Insurance along with accompanying Additional Insured Endorsement to the following address:

e-mail: [Olivia.Escalona@ucf.edu](mailto:Olivia.Escalona@ucf.edu)  
Mail: **University of Central Florida**  
**Risk Management**  
12601 Aquarius Agora Dr.  
Orlando, FL 32816-3500

With a copy to:  
e-mail: [rlamkin@ucfcc.com](mailto:rlamkin@ucfcc.com)  
Mail: UCF Convocation Corporation  
Attn: General Manager  
PO Box 662150  
Orlando, FL 32816-3222

- e. The University, at its sole discretion, has the right to deviate from any of the insurance requirements herein. If the University decides to deviate from the insurance requirements stated herein, the University will inform the Concessionaire in writing.
- f. UCFCC shall maintain Fire and Extended Coverage insurance on the Facility premises occupied by Concessionaire. In the event the premises is partially or totally destroyed by fire or otherwise, during the term of this contract, UCF shall, at its sole option, terminate this contract, repair the premises or rebuild the premise; and in the event of partial destruction which leaves the premises uninhabitable, or in the event of total destruction, this contract shall, at UCF's sole option, be terminated immediately or be extended for a period of time equal to the time from when the premises became uninhabitable until the premises again became habitable.
- g. Concessionaire, at its own expense, shall obtain and maintain property insurance to cover all personal property owned by it, and its stock, materials and supplies. Under no condition shall UCF or UCFCC be liable for the personal property, tangible or intangible, of the Concessionaire or its customers, employees or contractors that might be damaged or destroyed on the premises because of fire or other casualty.

### 2.3 **Term Of Contract**

- a. The term of this Contract shall be for **Five (5) years and 4 months**, beginning on February 1, 2019 and expiring on June 30, 2024; unless sooner terminated in accordance with its terms (the "Term").
- b. The University shall have the option to renew the Contract for 5-years ("Renewal Option") by providing the Concessionaire with one hundred twenty (120) days written notice of intent to renew prior to the expiration of the Term.

- c. Notwithstanding anything to the contrary contained in this Agreement, if in any Contract Year, for any reason (including without limitation if due to the occurrence of a force majeure), the Facilities host less than 70% of the average number of turnstile attendees over fiscal years 2015, 2016, 2017, and 2018 (the "Minimum Attendance,") then Concessionaire shall have the right (but not the obligation) to extend the Term of this Agreement for an additional one year period for each such affected Contract Year. For purposes of this provision, the average attendance for the previous four (4) Facilities' fiscal years is established at 461,000; therefore, the minimum attendance shall be established as 70% of 461,000 or 322,700.

#### **2.4 Termination Of Contract**

- a. The Concessionaire shall perform the Services in accordance with the terms and conditions as stated herein and in accordance with the highest standards and commercial practices for operation of food and beverage services at a facility serving UCF. If the Concessionaire fails to fulfill or perform any material obligation of the Concessionaire under the Contract and such failure shall continue for thirty (30) days following written notice from the University to the Concessionaire informing the Concessionaire of its failure to fulfill or perform said material obligation, then the University may terminate the Contract immediately by providing the Concessionaire with written notice.
- b. If the University fails to fulfill or perform any material obligation of the University under the Contract and such failure shall continue for thirty (30) days following written notice from the Concessionaire to the University informing the University of its failure to fulfill or perform said material obligation, then the Concessionaire may terminate the Contract immediately by providing the University with written notice.
- c. Each party may terminate the Contract immediately upon written notice to the other party if the other party (i) is judged bankrupt or insolvent; or (ii) has proceedings in bankruptcy or insolvency instituted against it, a receiver is appointed, or if any substantial part of its assets become the object of attachment, sequestration or other type of comparable proceeding, and such proceeding is not vacated or terminated within thirty (30) days after its commencement or institution.
- d. Upon expiration or earlier termination of this Agreement and payment of any Buyout Amount owed to Concessionaire and pursuant to Section 4, Concessionaire shall return all Equipment, Leasehold Improvements and Smallwares to the University in "like new" condition, less normal wear and tear.
- e. Should this Contract be terminated prior to the end of the Term, upon the effective date of termination, neither party hereto shall have any liability, either for damages, additional rents, fees or other charges, or otherwise, to the other based upon this Contract, except (i) as to liabilities from incidents or circumstances which occurred, accrued, or existed prior to the effective date of termination, and (ii) University's obligation to pay Concessionaire the Buyout Amount.

#### **2.5 Assignment And Amendment Of Contract**

This Contract and any duties or obligations under this Contract, shall not be assignable by the Concessionaire without the prior written consent of UCF. This Contract may be

amended only in writing signed by the Concessionaire and UCF with the same degree of formality evidenced in this Contract.

2.6 **Independent Parties**

UCF and the Concessionaire are independent contractors and independent parties, and neither shall be an officer, employee, agent, representative or co-partner of, or a joint venture with, the other.

2.7 **Records**

See Section 3.19(b).

2.8 **Public Records**

This Contract may be canceled unilaterally by the University for refusal by the Concessionaire/Contractor to allow public access to all papers, documents, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Concessionaire in conjunction with this Contract; provided however, that the University shall not be permitted to cancel this Agreement pursuant to this Section until it has first notified Concessionaire in writing of the breach and provided Concessionaire with 30 days to cure.

2.9 **Public Records, Service Contracts, Compliance With Section 119.0701, F.S.**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Office of the General Counsel, (407) 823-2482, [gcounsel@ucf.edu](mailto:gcounsel@ucf.edu), University Of Central Florida, 4365 Andromeda Loop N., Millican Hall, Suite 360, Orlando, FL 32816-0015.**

**PUBLIC RECORDS, CONTRACT FOR SERVICES**

To the extent that Concessionaire meets the definition of "Contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Concessionaire must comply with public records laws, including the following provisions of Section 119.0701, Florida Statutes:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Concessionaire does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Concessionaire or keep and maintain public records required by the public agency to perform the service. If the Concessionaire transfers

all public records to the public agency upon completion of the contract, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the contract, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Concessionaire of the request, and the Concessionaire must then provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If Concessionaire does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

This Concessionaire and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

2.10 **Severability**

If any provision of this Contract is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provision shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of such Contract.

2.11 **Notices**

Any written notices between the parties shall be sent by certified mail to the following addresses, or other addresses of which the parties shall have notified each other. All such



notices to either party shall be deemed to have been received 3 days after mailed certified mail.

For UCF:

UCF Convocation Corporation  
12777 Gemini Blvd. N., Suite 1023  
Orlando, FL 32816

With Copy to:  
University of Central Florida  
Office of the General Counsel  
4635 Andromeda Loop North  
Orlando, FL 32816-0015

For Concessionaire:

Spectra Food Services & Hospitality  
Attn: President  
18228 US Highway 41 North  
Lutz, FL 33549

With Copy To:  
Spectra Food Services and Hospitality  
3601 S. Broad Street  
Philadelphia, PA 19148  
Attn: General Counsel

2.12 **Governing Law And Venue**

This Contract and any disputes thereunder will be governed by the laws of the State of Florida and shall be deemed to have been executed and entered into in the State of Florida. Any such Contract shall be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. If any provision of this Contract is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provision shall be void and deemed inapplicable and omitted and shall not invalidate the remaining provisions of such Contract. UCF and Concessionaire hereby agree that this Contract, shall be enforced in the courts of the State of Florida and that venue shall always be in Orange County, Florida.

2.13 **Liaison**

UCF's liaison with the Concessionaire, if any, shall be the UCF Contract Administrator and/or his/her designee.

2.14 **Subcontracts**

The Concessionaire is fully responsible for all work that it performs under this Contract. The Concessionaire may not enter into written subcontract(s) for performance of certain of its functions under this Contract, unless approved by the University. The subcontractors and the amount of the subcontract(s) shall be identified to the University. No subcontract(s), which the Concessionaire enters into under this Contract, shall in any way relieve the Concessionaire of any responsibility for performance of its duties under this Contract. Concessionaire is responsible to fully notify any subcontractor(s) of their responsibilities under any subcontract. All payments to subcontractors shall be the sole responsibility of the Concessionaire.

2.15 **Employment Of UCF Personnel**

The Concessionaire shall not, without UCF's prior written consent, knowingly recruit for engagement, on a full time, part time, or other basis during the Term and any related subcontract, any individuals who are or have been UCF employees at any time during such

period, except for UCF's regularly retired employees, or any adversely affected State employees.

During the Term and for a period of one (1) year after the end of the Term, University and its affiliates shall not, without the prior written consent of Concessionaire, specifically solicit for employment by University, or encourage to cease rendering services to Concessionaire, any management-level employee of Concessionaire with whom University has had dealings by virtue of the engagement of Concessionaire hereunder to perform similar services to the University that the employee performed for Concessionaire. In the event of a breach of this provision, Concessionaire will be entitled (in addition to any other rights and remedies which Concessionaire may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain University from continuing such breach. For the avoidance of doubt, nothing in this paragraph shall prohibit the University from hiring a management-level employee of Concessionaire for an academic position who applied for such position through a public job posting. Further, the listing of or publishing open positions on employment websites or UCF's website, or hiring in response to open positions, shall not constitute soliciting Concessionaire employees for employment or constitute a breach of this Agreement.

2.16 **Conflicts Of Interest**

Acceptance of this Contract shall certify that Concessionaire is aware of the requirements of Chapter 112, Florida Statutes and in compliance with the requirements of Chapter 112, Florida Statutes and other applicable laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Concessionaire certifies that its directors and/or principal officers are not employed and/or affiliated with the University or UCFCC unless a current Conflict of Interest (Report of Outside Activity/Employment) form has been completed, executed by such director or officer and approved in accordance with applicable University and UCFCC policies or rules. Violation of this section by Concessionaire shall be grounds for cancellation of the Contract; provided, however, that the University shall not be able to cancel this Agreement pursuant to this Section until it has first notified Concessionaire in writing of the breach and provided Concessionaire with 30 days to cure and provided the breach can be cured.

2.17 **Equal Opportunity Statement**

The State of Florida, UCF and Spectra, subscribe to equal opportunity practices, which conform to both the spirit and the letter of all laws against discrimination and are committed to non-discrimination on the basis of race, creed, color, sex, age, national origin, religion, veteran or marital status, or disability.

- a. The Concessionaire shall agree to comply with the Americans with Disabilities Act (ADA) of 1990.

2.18 **Waiver Of Rights And Breaches**

No failure or delay by a party hereto to insist on the strict performance of any term of the Contract or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of such a contract, but each and every term of such a Contract shall continue in full force and effect with respect to any other then

existing or subsequent breach thereof. The remedies provided in such a Contract are cumulative and not exclusive of the remedies provided by law or in equity.

2.19 **Headings Not Controlling**

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

2.20 **Employee Involvement / Covenant Against Contingent Fees**

In accordance with Section 112.3185, Florida Statutes, the Concessionaire hereby certifies that, to the best of its knowledge and belief, no individual employed by the Concessionaire or subcontracted by the Concessionaire has an immediate relationship to any employee of UCF who was directly or indirectly involved in any way in the procurement of this Contract, or goods or services thereunder. Violation of this section by Concessionaire shall be grounds for cancellation of such Contract. The Concessionaire also warrants that no person or selling agency has been employed, engaged or retained to solicit or secure any contract resulting from this Contract or has any advantage hereunder upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, or in exchange for any substantial consideration bargained for, excepting that which is provided to the Concessionaire's bona fide employees or to bona fide professional commercial or selling agencies or in the exercise of reasonable diligence should have been known by the State to be maintained by the Concessionaire for the purpose of securing business for Concessionaire. In the event of the Concessionaire's breach or violation of this warranty, UCF shall, subject to Concessionaire's rights under Chapter 120, Florida Statutes, have the right, at its option, to terminate the Contract without liability, to deduct from the charges otherwise payable by UCF under such Contract the full amount of such commission, percentage, brokerage, or contingent fee, and to pursue any other remedy available to UCF under such Contract, at law or in equity.

2.21 **Employment Of Aliens**

Concessionaire's employment of unauthorized aliens, if any, shall be considered a violation of §§274(e) of the Immigration and Nationality Act. If the Concessionaire knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Contract by the University; provided, however, that the University shall not be permitted to cancel this Agreement pursuant to this Section until it has first notified Concessionaire in writing of the breach and provided Concessionaire with 30 days to cure and provided the breach can be cured.

2.22 **Site Rules And Regulations**

Concessionaire shall use its best efforts to assure that its employees and agents, while on UCF's premises, shall comply with the State's, UCFCC's and UCF's site rules and regulations, if any.

2.23 **Travel Expenses**

Not applicable

2.24 **Annual Appropriations**

Not applicable

2.25 **Taxes**

The State of Florida is a tax-immune sovereign and exempt from the payment of all sales, use and excise taxes. The Concessionaire shall be responsible to pay any such taxes imposed on its sale of food and beverage items under the Contract, if any.

2.26 **Use Of Contract By Other Governmental Agencies**

At the option of the Concessionaire, the use of the contract may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities. Each governmental agency allowed by the Concessionaire to use this contract shall do so independent of any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received and accepted. No agency receives any liability by virtue of this offer and subsequent contract award.

2.27 **Public Entity Crimes**

A person or affiliate who has been placed on Florida's convicted vendor list following a conviction for a public entity crime may not submit an offer on a contract to provide any goods or services to a public entity, may not submit an offer on a contract with a public entity for the construction or repair of a public building or public work, may not submit offers on leases of real property to a public entity, may not be awarded, or perform work as a contractor, supplier, subcontractor, or consultant under, a contract with any public entity, and may not transact business with any public entity in excess of the offer limit for that public entity, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

2.28 **Intellectual Property**

Each party acknowledges and agrees that (a) all rights, title and interest in and to the other party's Marks belong to the other party; (b) it has not made and will not make any unauthorized use of the other party's Marks and any such use would require a license from the other party; (c) any use it has made or will make of the other party's Marks has not conferred, and will not confer, any rights or benefits on it in respect thereof, and any such rights or benefits inure to the other party; (d) the other party's Marks have acquired a secondary meaning in the minds of the general public; (e) the goodwill associated with the other party's Marks has great value and such goodwill belongs exclusively to the other party, and (f) it shall not, during the Term or thereafter, challenge the rights, title or interest of the other party in or to the other party's Marks.

Subject to the terms and conditions of this Agreement, University grants to Concessionaire a non-exclusive, royalty-free, limited, non-transferable license to use the University Marks during the Term in connection with its provision of the Services. University may establish reasonably guidelines governing the use of University Marks and Concessionaire shall use best efforts to comply with any of such guidelines provided to Concessionaire in writing by

the University in advance. Any use of any University Marks by Concessionaire shall inure to the benefit of the University.

From time to time during the Term, the parties may decide that Concessionaire will create a particular menu item or concession stand concept that incorporates University Marks or is otherwise unique to the University or the Facilities (“Custom Concept”). The name of any such Custom Concept shall be considered a “work for hire” for the University and the University shall own all intellectual property rights in and to such name. Concessionaire grants University a non-exclusive, royalty-free, limited, non-transferable license in perpetuity to use any recipes or other work product associated with the Custom Concept, it being acknowledged and agreed that as between Concessionaire and the University, Concessionaire shall own such recipes and work product and may, at its discretion, use them for any purpose whatsoever. Any menu item or concession stand concept that does not constitute a Custom Concept, does not incorporate the Marks of Concessionaire and is not considered proprietary to Concessionaire may be reused by the University after the Term of this Agreement with Concessionaire’s permission, which permission shall not be unreasonably withheld, it being understood and agreed that the University has an interest in maintaining menu and concept continuity in its concessions offerings.

Each party hereby represents and warrants to the other that, (a) all applicable laws, rules and regulations have been complied with, (b) it is free and has full right to enter into this Contract and perform all of its obligations hereunder, (c) any authorized use of its Marks by the other party for advertising or trade purposes or any commercial purposes shall not violate any laws or the rights of any third parties and (d) no third party has any rights in, to, or arising out of, or in connection with its Marks, including without limitation any claims for fees, royalties or other payments.

The Concessionaire agrees to indemnify and hold harmless the University and those acting for or on its behalf, the UCF Board of Trustees, the State of Florida and the Florida Board of Governors, UCFCC and their respective officers, agents, employees and servants from and against any and all losses, claims, damages, expenses or liabilities of any kind, including court costs and attorneys' fees, directly resulting from (a) the performance or non-performance of the University’s order by the Concessionaire, (b) the use or reproduction in any manner, whatsoever, or (c) any breach or alleged breach of any of the Concessionaire’s contracts or representations and warranties herein.

2.29 **Export Control**

The parties shall comply with all applicable U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799 and/or other restrictions imposed by the Treasury Department’s Office of Foreign Asset Controls (OFAC), in the performance of this Contract. The parties agree that no technology, related data or information will be exchanged or disseminated under this Contract nor any collaboration conducted pursuant to this Contract, which are export controlled pursuant to the export control laws of the United States, including the EAR and the ITAR and any other applicable regulations.

The Parties agree that the Concessionaire will not provide the University with any ITAR or EAR restricted technology and/or related data, and that any ITAR or EAR restricted technologies and/or data produced in furtherance of this Contract will be in the exclusive

possession of the Concessionaire and at no time will any export controlled technologies, related data, or information be intentionally or inadvertently transferred to the University, its facilities, labs, staff, researchers, employees, officers, agents, servants or students in the performance of this Contract.

If the Concessionaire wishes to disclose export controlled technology or technical data to the University, the Concessionaire will, prior to disclosing any information, technical data or source code that is subject to export controls under federal law, notify the University in writing that the material is export controlled and shall identify the controls that apply. The University shall have the right to decline or limit (a) the receipt of such information, and (b) any task requiring receipt of such information. In the event the Concessionaire sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate the Contract. The Concessionaire understands and agrees that to the extent the Concessionaire's personnel have access to work or materials subject to U.S. export controls while on University property, such personnel will meet all federal export control regulatory requirements or have the appropriate U. S. government approval.

**2.30 Parking**

Concessionaire shall ensure that all vehicles parked on campus for performing Services under this Contract shall have proper parking permits, if required. This applies to all personal vehicles and all marked and unmarked company vehicles that will be on any University campus for one (1) day or more or on a recurring basis. If applicable, all such vehicles must be registered with the University's Parking Services Department, and parking permits must be purchased by the Concessionaire. Concessionaire's vehicle(s) shall observe all parking rules and regulations. Failure to obtain parking permits, properly display them, and otherwise comply with all of the University's parking rules and regulations could result in the issuance of a parking ticket and/or towing at the expense of the Concessionaire or Concessionaire's employees. For additional parking information or information regarding parking fees/rates, contact the University's Parking Services Department at (407) 823-5812 or online at <http://parking.ucf.edu>.

**2.31 Compliance**

The parties shall at all times comply with all applicable ordinances, laws, rules and regulations of local, state and federal governments, or any political subdivision or agency, or authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules and regulations with respect to the parties.

**2.32 Monthly Settlement & Billing**

Concessionaire shall pay any Commissions owed to the University pursuant to Section 4 on a monthly basis, together with statements described in the next paragraph. Such payments and statements shall be delivered to University with respect to each Accounting Period by the 20<sup>th</sup> day following the end of such Accounting Period. The balance of all Gross Receipts shall be retained by Concessionaire.

Concessionaire shall provide to University, within 20 days following the end of each Accounting Period, financial reports regarding its provision of Services during such Accounting Period, including a statement showing Gross Receipts for the applicable Accounting Period. Concessionaire shall also provide to University, within 90 days following the end of each Contract Year, financial reports regarding its provision of Services during such Contract Year, including a statement showing sales by location and consolidated, including commissionable and noncommissionable sales, total sales, Subcontractor Sales and “Net Subcontractor Sales” received by Concessionaire, and Reserve Account (listing of all expenditures itemized by equipment, location) and Gross Receipts for the applicable Contract Year. Additionally, Concessionaire shall provide the University, within 24 hours following each event at the Facilities, a daily Gross Receipts report in a form to be mutually agreed upon.

With respect to any payments that the University must make to Concessionaire pursuant to this Agreement, the following terms shall apply:

The University shall only submit payment to the Concessionaire, if Concessionaire has provided the University with approved invoices. Mere statements in lieu of approved invoices will not be accepted by the University. All invoices must specifically describe the services and/or goods provided, the dates and hours that the services were rendered and/or goods delivered and the fee charged. Concessionaire shall deliver the invoices to UCF Convocation Corporation, unless Concessionaire has been otherwise instructed by the University. If Concessionaire’s invoice lists any freight or cartage charges, such invoice must attach all of Concessionaire’s receipted transportation bills.

**2.33 No Joint Venture**

Nothing contained in this Agreement shall be construed to create a joint venture, partnership, or other like relationship between the parties.

**2.34 Leased Equipment**

The risk of loss or damage to leased equipment, goods or property leased by Concessionaire to perform the Services shall not transfer to the University except as provided in §680.219, Florida Statutes. Any security interest in the leased equipment, goods or property granted to Concessionaire contrary to AGO 79-72 and AGO 80-9 is null and void. Limitation of remedies provisions, which are unconscionable under applicable Florida law, are void.

**2.35 Material Safety Data Sheet (MSDS)**

In compliance with Florida Statutes, Ch. 442, a Material Safety Data Sheet (MSDS) must accompany any applicable item delivered under this Agreement, and any applicable item(s) used or stored on University property must have an MSDS readily available at the storage location and to the person(s) using such item(s).

**2.36 Non-Performance**

Reference Sections 2.1 and 2.4.

2.37 **Vietnam Era Veteran's Readjustment Act of 1974**

The University and the Concessionaire must comply with all applicable provisions of: (i) §402:60-250.4 of the Vietnam Era Veterans Readjustment Act of 1974; (ii) §503:60-741.4 of the Rehabilitation Act of 1973; (iii) Executive Order 11246, as amended; and, (iv) the rules, regulations, and relevant orders of the U.S. Secretary of Labor.

2.38 **State Licensing Requirements**

To the extent applicable, Concessionaire shall have all appropriate licenses to conduct business in the State of Florida and Orange County. If Concessionaire contemplates the use of subcontractors, the Concessionaire is responsible for ensuring that all subcontractors are registered with the State of Florida in accordance with Chapter 607 or 620, Florida Statutes. For additional information, the Concessionaire should contact the Florida Secretary of State's Office.

2.39 **Family Educational Rights And Privacy Act**

Concessionaire acknowledges that UCF has a duty to maintain the privacy of student records, including without limitation education records as defined by the Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) ("FERPA"), and further acknowledges that as a contractor to whom Licensee has outsourced certain institutional services or functions:

- a. Confidential information about UCF's students may contained in records provided to and maintained by Concessionaire, and Concessionaire will protect the privacy of all student education records to the fullest extent required of UCF under FERPA;
- b. Concessionaire is performing an institutional service or function that has been outsourced by UCF and for which UCF would otherwise use its employees;
- c. Concessionaire is under the direct control of UCF with respect to the use and maintenance of education records, as defined by FERPA;
- d. Concessionaire is subject to all FERPA requirements governing the use and re-disclosure of personally identifiable information from education records, including without limitation the requirements of 34 CFR § 99.33(a);
- e. Even in circumstances that might justify an exception under FERPA, Concessionaire may not disclose or re-disclose personally identifiable information unless UCF has first authorized in writing such disclosure or re-disclosure; and
- f. Concessionaire will not use any personally identifiable information acquired from UCF for any purpose other than performing the services or function that are the subject of this Contract.

2.40 **Smoke Free Policy**



The University prohibits smoking on all university owned, operated, leased and/or controlled properties in order to maintain a healthy and safe environment for its faculty, staff, students, and visitors. Visit <http://www.ucf.edu/smokefree> for additional information.

2.41 **Contractual Precedence**

This Contract, and any attachments and/or addenda that are executed by Concessionaire and the University's duly authorized signatory constitutes the entire and exclusive agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous negotiations, correspondence, conversations, agreements and understandings concerning this subject matter. Attachments and/or addenda may include but are not limited to the ITN which includes all the University's ITN specifications, and the Response and Offer. In the event of any conflict or inconsistency between before mentioned documents, the order of precedence is:

- a. The Agreement/Contract;
- b. University's ITN;
- c. The Offer;
- d. The Response; and
- d. Any other attached documents signed by the Concessionaire and University's official signatory at the time the Agreement/Contract is executed.

2.42 **Authority**

Each party represents and warrants to the other that: (i) it has full corporate power and legal authority to enter into and perform this Agreement; (ii) all necessary corporate approvals for the execution and performance of this Agreement by it have been obtained; and (iii) this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms.

**SECTION 3: CONTRACT REQUIREMENTS**

**3.1 Operations:** Concessionaire shall at all times comply with all applicable laws, rules, regulations and orders of the Federal Government, the State of Florida, the County of Orange, and also shall abide by all rules, regulations and directives prescribed by the University. Concessionaire has a reasonable responsibility to be aware of applicable university rules made available at University Policies <https://policies.ucf.edu/> and University Regulations <https://regulations.ucf.edu/>.

**a. Concessionaire’s Duties/Responsibilities:**

Except as otherwise provided in this Agreement, the Concessionaire shall perform the Services on its own credit and shall furnish at its own expense, all non-concessions equipment (i.e. equipment used transport food and beverage items around the Facilities such as pallet jacks, forklifts and motorized carts), labor, supplies, and services required to perform its duties and responsibilities hereunder. Concessionaire shall conduct all of the Services in a first class, professional, businesslike, and efficient manner consistent with a premier University.

**b. Arena Organization:** The Concessionaire will work directly with the UCF Contract Administrator to ensure a continuous high level of service, quality, and customer satisfaction.

- For non-athletic events at the Arena (i.e. concerts, graduation ceremonies, etc.), the food and beverage prices may be set differently from that of the “athletic event” pricing and will be determined by mutual agreement between Concessionaire and the University.

UCFCC and Concessionaire may mutually agree to run “Promotions” at the Arena which can temporarily reduce food/beverage prices, change menu items, and/or serving sizes, in accordance with the terms described in Section 3.22.

**c. License to use Food and Beverage Areas; Excluded Areas:** University hereby grants Concessionaire a license to use the Food and Beverage Areas, together with the improvements, equipment and personal property upon or within such areas, along with the non-exclusive right to use the concourses, spectator seating areas, common areas, loading areas, walkways and other public areas of the Facilities, solely for the purpose of providing the Services. For the avoidance of doubt the following areas are not part of the Food and Beverage Areas, unless designated by the University from time to time: the parking lots of the Facilities, the locker rooms, non-food and beverage operations areas, backstage, performer areas, employee and athletic dressing rooms. Notwithstanding the above, the UCF Contract Administrator may limit the areas where “hawking” may occur.

**3.2 Products and Services.**

**a.** All foods, drinks, beverages, confectionery, refreshments, and the like sold or kept for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to the federal, state, municipal, and other laws, ordinances, and regulations. No imitation,

adulterated, expired or misbranded article shall be sold or kept for sale, and all product kept on hand shall be stored and handled with due regard for sanitation. Leftover perishable product shall not be sold at any time.

- b. Concessionaire shall annually survey pricing at comparable venues and provide results to the University.
- c. All products kept for sale shall be subject to inspection by the University at the University's request. The University may only reject products that are expired or not otherwise stored or being handled in compliance with applicable laws. Rejected product shall be immediately removed from the Facilities and shall not be returned for sale.
- d. The parties shall mutually agree upon any local and/or Branded Products and serving items that will be served at the Facilities. It is also expected that the Concessionaire will deliver nationally recognized branded products for consideration by the University.
- e. No off-site or sub-contracted sales are permitted from the Facilities unless approved by the University.
- f. Concessionaire is encouraged to work with local not-for-profit organizations, such as food banks to reduce product waste. The University requires the Concessionaire to identify and consider the use of local products and vendors to utilize throughout the Facilities.
- g. At no time will Concessionaire enter into an agreement whereby a particular product is to be sold or served on an exclusive basis at the Facilities, without the prior written approval of the University. The University shall not unreasonably withhold approval.
- h. The Concessionaire and the University may mutually agree to modify Concessionaire's operations for a particular event to accommodate the needs of a Renter. The precise modifications and the compensation owed to Concessionaire as a result of said modifications, if any, shall be mutually agreed upon between the parties in each instance. Renters shall not be permitted to use any of Concessionaire's equipment without Concessionaire's approval, which approval Concessionaire shall not unreasonably withhold. The Parties agree that the permanent stands and nearly all equipment is owned by the University. The University shall be responsible for ensuring each Renter safeguards the Food and Beverage Areas, repairs any damage caused thereto and returns the applicable Food and Beverages Areas to the University and Concessionaire in clean condition at the end of its period of use.
- i. Notwithstanding anything to the contrary contained in this Agreement, the brands and price of all products sold by Concessionaire shall be determined by Concessionaire, subject to the reasonable approval of the University. Provided price, quality, market acceptability, service and other terms are generally competitive, Concessionaire agrees to give preference to and feature at CFE Arena and the Venue suppliers of products designated by University who purchase advertising from the University (or, if applicable, an agent or licensee of the University) so long as the giving of such preference does not violate applicable laws, rules or regulations and features of such product and terms of such transaction are reasonable, as determined by Concessionaire in its sole discretion.

**3.3 Alcoholic Beverages**

- a. The Concessionaire must be eligible and able to be a liquor permit holder for those Facilities identified herein where Concessionaire is required to sell Alcoholic Beverages. All filing fees in connection with transferring the current liquor permits to the Concessionaire shall be paid by the Concessionaire.
- b. No Alcoholic Beverages are currently sold from concession stands at any of the athletic events. Alcoholic Beverages are sold in the premium areas that are not part of the General Admission Seating/Areas, which are excluded from Concessionaire's exclusive rights under this Agreement and may be sold at the Arena for non-athletic events, such as concerts. Alcoholic Beverages may also be served for catered events, which are excluded from Concessionaire's exclusive rights under this Agreement.
- c. Alcoholic Beverages are to be offered for sale by the Concessionaire to the extent permitted by applicable state and local laws, and subject to all state and local laws and University policies regarding the sale and consumption of alcohol. The final decision, as to whether or not Alcoholic Beverages may be sold at an event, or in any designated area of the Facilities, shall be the sole responsibility of the University. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of the Concessionaire.
- d. The Concessionaire is responsible for the lawful administration of any and all state alcohol enforcement policies and must comply with the University's alcohol policy, which among other provisions requires "TIPS" or "Responsible Vendor" training for all individuals selling, distributing or otherwise providing Alcoholic Beverages for consumption.
- e. The Concessionaire must procure and keep in force during the entire period of the Contract all permits, and licenses required, including licenses required to sell Alcoholic Beverages, by all laws and regulations of the State of Florida and the County of Orange.

**3.4 Advertising - Marketing**

Concessionaire covenants and agrees not to promote in any way the use of its services which might be construed in any way that UCF is endorsing such without prior University approval.

Marketing of the services is of extreme importance. Marketing strategies must be directed to increase visibility, ownership, and patronage loyalty.

- a. Concessionaire shall indicate how they intend to develop and promote their marketing plan for the Services. The plan shall incorporate latest technology for sales, facility design and promote visibility, ownership, patronage loyalty, and return customers.
- b. Concessionaire shall indicate strategies to highlight and focus on new products.
- c. Plan shall address usage of pamphlets, posters, electronic menu boards, website, social media and specialized promotions.
- d. Concessionaire shall indicate the strategy for customer development and retention.

- e. Sharing of knowledge: University reserves the right to use any suggestions, comments, ideas, or insight that is provided by Concessionaires to University. This input may include, but is not limited to, walk-through, proposals, or general discussions. The Concessionaire will also be asked to contribute input for successful marketing ideas. This may include but is not limited to placement of stands, marketing of products, sharing of knowledge from prior situations, possible promotions suggestions, advertisement suggestions, or business practices.

**3.5 Exclusive Use Agreements.**

- a. The University has entered into agreements whereby exclusive rights to sell, market, promote, and/or provide specific services, merchandise, classes of products, and the licensing of University Marks, have been granted to University partners. It is the responsibility of the University to communicate in writing to Concessionaire the scope of such exclusive agreements and for Concessionaire to use commercially reasonable efforts to comply with, all University exclusivity agreements so long as any such compliance does not cause Concessionaire, in its reasonable opinion, to be in violation of any applicable laws, rules or regulations. With the exception of purchases required under the Coca-Cola Agreement, notwithstanding anything to the contrary contained in this Agreement, in the event that any exclusive agreement requires Concessionaire to purchase products that are more expensive than the equivalent products Concessionaire would typically purchase, the parties shall negotiate in good faith to adjust the prices of the affected items or adjust other terms of this Agreement to make Concessionaire whole. These exclusivity agreements include, but are not limited to:

**Coca-Cola Exclusive.** The University has entered into an agreement designating Coca-Cola as the exclusive fountain syrup company on campus (the “Coca-Cola Agreement”). The following are excerpts from the University’s Coca-Cola Agreement and shall be observed by Concessionaire:

*a. “Exclusive Beverage Availability Rights” Coca-Cola (“Company Beverages”) will have exclusive Beverage availability rights on the entire Campus at all times during the Term. University will make Company Beverages available for sale on Campus in all package forms, through fountain dispensing, coolers, kiosks, hawking, and vending, as well as through any other means agreed upon by Coca-Cola and University. University will use its reasonable, good faith efforts to maximize the sale and distribution of Company Beverages on Campus. At a minimum, Company Beverages shall be widely available for purchase by consumers on Campus and will be sold and/or served as part of all meal plans provided to University students and/or others on the Campus.*

*Note that if Concessionaire is serving “mixed-drinks”, only Coke products may be used in the composition of such drink when the drink-mix contains a component that Coke provides (Coke, Orange juice, etc.).*

*b. “Beverages” means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage’s labeling marketing or packaging. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups® pods and all other beverage bases from which Beverages*

can be made and brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®, Keurig®), are deemed to be included in this definition. For the avoidance of doubt “flavor enhancers”, “liquid water enhancers”, drinking water dispensing systems and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages.

**c. Permitted Exceptions.**

- (i) *Company Beverages will be the only Beverages sold, served, distributed, sampled, or otherwise made available on Campus, provided however University may, on a non-exclusive basis, serve, sell or dispense the following Competitive Products (“Permitted Exceptions”) on Campus:*
  - *Fresh milk;*
  - *Hot tea and hot coffee freshly brewed on premise;*
  - *Milkshakes and smoothies made on the premises from fresh ingredients; and*
  - *Chick-fil-A 's signature lemonade*
- (ii) *Protein Powder may be served or dispensed to student athletes in locker rooms and training facilities on Campus but will not be sold anywhere on Campus. Use of protein powder is permissible to be blended into drinks/smoothies (made fresh on premises) sold as part of a retail operation at approved Campus locations, including the Stadium and Arena. There will be no advertising of any kind for protein powder.*
- (iii) *Permitted Exceptions, to the extent served or sold in cups, shall not be served or sold in Approved (Coke) Cups.*
- (iv) *University may display trademarks for Permitted Exceptions on menus, menu-boards, dispensing equipment, coolers and vessels to indicate availability, but no Permitted Exceptions will be marketed, advertised, promoted, or sampled on Campus, or otherwise in connection with the University, the Campus, the University Teams or the University Marks.*
- (v) *Coca-Cola acknowledges that a natural food retail outlet or equivalent located on Campus serves various Beverages. University will mandate to the outlet or equivalent concept that no PepsiCo Beverages should be sold, served, dispensed or sampled at the concept outlet or equivalent located on Campus.*

**d. Beverage Purchase Requirement.** *University and its third-party food and beverage concessionaires (“Concessionaire”) will purchase from Bottler their entire requirement for Beverages and Approved Cups, lids and carbon dioxide on Campus except for Simply Orange brand products and Odwalla brand products, which may be delivered directly by Company and/or its distribution partners. To the extent University has a Concessionaire operating its facilities on Campus and that Concessionaire has an agreement with Company that describes the terms for Beverage pricing, then Concessionaire will purchase all such Company Beverages in accordance with*

*Company's existing agreement with University's Concessionaire. To the extent University has a Concessionaire operating its facilities on Campus and that Concessionaire does not have an agreement with Company, then University and Sponsor shall negotiate pricing for Company Beverages at such time.*

*e. Except as set forth with respect to the Permitted Exceptions and Special Promotional Events, no signage, advertising, or trademark visibility for any Competitive Products will be displayed or permitted anywhere on Campus. No Competitive Products will be associated, directly or indirectly, with University, the Campus, the University Teams, the University Athletic Director, or the University Marks, on or off-Campus, whether through advertising, promotions or otherwise. University will take all steps necessary or appropriate to stop third parties from associating Competitive Products with University.*

*f. All Concessionaires with Beverage operations on Campus will comply with all applicable provisions of the Coca-Cola Agreement, including purchasing their entire requirements for Beverages, cups, lids, and CO 2 from Bottler (except as otherwise permitted under ("Permitted Exceptions") and using Approved (Coke) Cups."*

- b. Subject to the terms and conditions of this Agreement, including, without limitation, the first paragraph of this Section 3.5, the University has sole discretion to enter into exclusive contracts.
- c. The University shall retain the rights for any sponsorship of beverage cups or other materials used in the delivery of the Services. The University shall specify the design for souvenir beverage cups and Concessionaire will be responsible for all costs for the manufacture and acquisition of the cups from a licensed manufacturer.
- d. Subject to the terms and conditions of this Agreement, including without limitation, the first paragraph of this Section 3.5:

**The University or its designee may sell sponsorship packages for the Facilities.**

Therefore, the University reserves the final right of approval of Concessionaire's sources of product supply. The University expects Concessionaire will use the sponsored product when such product is on the current menu. The Concessionaire, however, will not be required to purchase from suppliers whose level of quality, service, and/or prices, are not competitive with the marketplace. Concessionaire retains no advertising or sponsorship rights in this Agreement. Current sponsorship items are:

- Coca Cola

- e. In the event that the University shall seek to bring major NCAA or other similar national or international events, Concessionaire shall negotiate in good faith to make modifications to the Agreement that are necessary for the University to obtain any such event.

**3.6 Basic Utilities**

Unless stated otherwise herein, the following utilities and services are provided to Concessionaire at no additional cost:

- Trash removal (Non-hazardous trash pickup from a collection points designated by the University or UCFCC); Concessionaire may be required to participate in the University's or UCFCC's recycling program by collecting specified recyclable products and transporting them to the designated collection point(s).
- Heating, Ventilation, and Air Conditioning (HVAC);
- Electric (Lighting and convenience);
- Water (potable & waste);
- Gas (cooking)

### **3.7 Additional Utilities**

Telephone, Television (cable/satellite), Internet access, connection to UCF's fiber/Ethernet/network, and any other service or utility not listed above as included in the basic utilities, are at additional cost and will be the responsibility of the Concessionaire. These services are available from the University's Computer Services and Telecommunications (CS&T) department. Pricing for these services can be viewed here: <http://www.cst.ucf.edu/service-catalog/cst-telecommunications/>

### **3.8 Environmental/Sustainability Practices**

The Concessionaire shall utilize environmentally friendly practices in its operation of the Facilities and shall abide by all Facilities' environmental/sustainability practices that are generally applicable to all users of the Facilities and are provided to Concessionaire in writing in advance.

### **3.9 Licensing, Permits, Taxes**

The Concessionaire shall, at its sole expense, procure and keep in effect all necessary permits and licenses required for its performance under this Agreement, and shall post or display in a prominent place such permits and/or notices as are required by law. The Concessionaire shall collect and remit sales tax in accordance with Section 2.25 of this Agreement and pay for any and all payroll taxes related to its employees, and any federal, state, and local income taxes. Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities that Concessionaire is obligated to pay under this Contract, and shall pay any such taxes as a Direct Operating Cost.

### **3.10 Sanitation and Food Safety**

- a. Concessionaire shall dispose of cooking grease, oils or fats using a rendering company or other University approved method of disposal, at Concessionaire's sole cost.
- b. The Concessionaire shall provide all major cleaning/janitorial functions for the Food and Beverage Areas along with requisite sanitation services for the Food and Beverage Areas.
- c. The Concessionaire shall ensure that all employees are trained in the highest standards of sanitation and safety and supervised in a "clean as you go" policy that will result in clean and orderly Food and Beverage Areas at all times.
- d. The Concessionaire shall develop, implement, and update cleaning and sanitation



schedules for all Equipment. Cleaning must be sufficient to provide protective maintenance against unnecessary deterioration, and provide a clean, neat, and sanitary appearance. Sanitation must meet the standards of the Florida Department of Business and Professional Regulation (DBPR), Department of Health (DOH), and the University.

**3.11 Concessionaire Obligations**

- a. Concessionaire’s Obligations. The Concessionaire shall provide the following as part of its management and operation of the Food and Beverage Areas:
  - Vehicles. The Concessionaire shall provide its own vehicle(s) as necessary (if any).
  - Emergency Key(s). The facility owners (i.e. Stadium/Venue/Arena/etc.) shall retain an emergency access key for all spaces Concessionaire occupies.
  - Internal Security. The Concessionaire shall collaborate with UCF’s Police Department, UCFCC and the University Administration concerning questions of discipline, enforcing law/regulations, and internal security and theft control in the Food and Beverage Areas. The University expects the Concessionaire's first point of contact with regard to security and safety issues for the Food and Beverage Areas to be UCF’s Police Department.
  - A Point-of-Sale system will be provided by the Concessionaire and purchased using the Investment.
  
- b. Concessionaire acknowledges and accepts that the Concessionaire’s office and concessions stands are received “as-is”, except for any repairs, alterations, modifications or restoration work specifically identified in the Concessionaire’s Proposal and approved by the University. Notwithstanding the foregoing sentence, it is the University’s responsibility to provide Concessionaire with “turnkey” Food and Beverage Areas to enable Concessionaire to perform the Services in the first-class manner that the University requires. Accordingly, to the extent that any amounts in addition to the Investment are required in order to provide “turnkey” Food and Beverage Areas, the University shall be solely responsible for such amounts. Concessionaire, by virtue of having operated in the Food and Beverage Areas under the Prior Agreement agrees that the Food and Beverage Areas are in a “turnkey” state at the commencement of this Agreement.
  
- c. Concessionaire shall not remove or modify any fixtures or furnishings affixed to the building, or any equipment owned by the University or UCFCC, and shall not perform any construction, remodeling, modification, or alteration of the premises without prior written approval of the University. In the event approval is granted, such work will be performed under the supervision of University or UCFCC and completed to its reasonable satisfaction. The parties shall mutually agree upon how any such work will be funded.
  
- d. The location of all concession stands, whether temporary, portable or permanent shall be mutually agreed upon between the parties. The Concessionaire shall acquire no right to any location once assigned by the University, but the parties must mutually agree upon any alterations to Food and Beverage Areas, it being understood and agreed that reasonable modifications may be required and to facilitate the needs of events or other building operations.
  
- e. Using funds in the Reserve Account, Concessionaire shall perform maintenance and repair of Equipment (food preparation, refrigeration, and cooking/heating equipment) whether

owned by Concessionaire or owned by the University and provided to Concessionaire for use in the performance of this Contract.

- f. The following services shall be performed by Concessionaire at its expense without the use of funds in the Reserve Account
  - 1. Cleaning of floors, fixtures, Equipment, etc., and other typical custodial services.
  - 2. Concessionaire shall sanitize and maintain all interior located grease traps within the foodservice areas, if any, on a regularly scheduled basis and as needed. UCFCC will provide the maintenance and cleaning of exterior located grease traps, if any.
  - 3. Trash removal. The Concessionaire shall be required to participate in the UCFCC's recycling program. The Concessionaire will be responsible for breakdown and recycling of all cardboard boxes. The Concessionaire shall remove all trash and recyclable materials and place them in the proper UCF trash bins/dumpsters and recycling containers or place in the collection points as directed by UCFCC.
  - 4. Concessionaire owned and installed computers.
  - 5. POS equipment and related systems/equipment located within the Food and Beverage Areas.
  - 6. Concessionaire must provide janitorial service and adequate pest control from a pest control contractor licensed by the state and approved by UCF, for the Food and Beverage Areas. UCF may provide this service for Concessionaire, in its discretion, and charge the cost to Concessionaire.
  
- g. Concessionaire must, in accordance with all applicable laws, ordinances, rules, and regulations, maintain and keep clean all Food and Beverage Areas, including the space within a 15-foot radius of each area, in a clean, sanitary and orderly fashion.
  
- h. The University has an inventory of University Provided Equipment that it intends to provide to Concessionaire "As-Is" for Concessionaire's use in the performance of this Contract. At the start of Contract, Concessionaire shall determine if it wants to accept and use the University Provided Equipment, or it may reject the acceptance and use of the University Provided Equipment. If Concessionaire rejects acceptance of any University Provided Equipment, Concessionaire shall notify UCFCC in writing of those specific items/equipment it rejects, and the equipment not accepted will not be considered University Provided Equipment for the purposes of this Agreement, it shall be abandoned in place or removed by UCFCC at the UCFCC's discretion and cost, and Concessionaire will have no responsibility to protect, maintain or repair said item/equipment. Any University Provided Equipment that Concessionaire chooses to accept and use, shall become the Concessionaire's responsibility to protect, maintain and repair in accordance with Section 3.11(e) above using funds in the Reserve Account. All University Provided Equipment shall remain the property of University and shall be returned to University at the end of the Term in the same or better, condition (normal wear accepted) as when it was received (excluding any items/equipment replaced or disposed of per mutual agreement during the Term of the Contract).
  
- i. Using funds in the Reserve Account, Concessionaire shall pay for all "preventative maintenance plans" for all Equipment.

- j. Concessionaire shall maintain UCFCC-approved par levels of all Smallwares provided that such “UCFCC-approved par levels” are reasonable and communicated to Concessionaire in writing in advance.
- k. Concessionaire shall set up Equipment and Smallwares for all events where Concessionaire is performing Services at the Facilities. Concessionaire shall be responsible for setting up and tearing down all portable Equipment, including work tables, if any.
- l. Using Funds in the Reserve Account, Concessionaire shall maintain all Equipment, used in performance of its duties, including rolling stock, in a good state of repair, including maintenance or repair necessitated by ordinary wear and tear.
- m. Should the replacement of any Equipment become necessary, as determined by the mutual agreement of UCF and Concessionaire, the replacement cost will come from the Reserve Account. If the Reserve Account does not have sufficient funds to pay for the equipment replacement, UCF shall be solely responsible for the shortfall and the new Equipment shall be the property of the University. If the replacement is due to the negligent use or maintenance, by the Concessionaire, its contractors, employees or agents the Concessionaire will pay for the total cost of such replacement.
- n. Concessionaire may self-manage or self-perform those maintenance/repair tasks within the Food and Beverage Areas for which it is required to provide/perform, or Concessionaire may outsource (subcontract) the work. If outsourcing the work, Concessionaire shall not use any maintenance/repair company, service provider, or subcontractor on University property that does not meet the minimum insurance coverage criteria set by the University (listed below) and subject to revision by UCF.
- o. Insurance Required: contractors providing services (for Concessionaire) on UCF property shall maintain worker's compensation, property liability, property damage and vehicle insurance during performance of their work. Concessionaire's liability insurance shall be written for not less than limits of \$100,000 per person, \$500,000 per occurrence. Coverage's shall be maintained without interruption from date of commencement of work until final payment and termination of any coverage required to be maintained after final completion.
- p. UCF will not be liable or held responsible for any actions or claims related or as a result of the relationship between Concessionaire and said service provider used by Concessionaire unless such actions or claims are the result of UCF's negligent actions or omissions.
- q. Concessionaire may request UCFCC to provide/perform some of the work/services identified above with UCFCC's own staff or have UCFCC subcontract the maintenance/repair services on its behalf. If UCFCC, in its sole discretion, agrees to provide/perform the work, it shall invoice Concessionaire for the actual cost of the maintenance/repair, and Concessionaire shall pay any such invoices using funds in the Reserve Account.
- r. The University and UCFCC reserves the right to inspect the Food and Beverage Areas at any time during the Term. In the event University or UCFCC, in its reasonable discretion, determines the Food and Beverage Areas are not being maintained in a satisfactory condition, the University or UCFCC may direct the Concessionaire to make the necessary repair or correction in accordance with the terms and conditions of this Agreement, to

return the Food and Beverage Areas to satisfactory condition. Such repairs shall be completed within thirty days or as mutually agreed upon between the parties. Notwithstanding the forgoing three sentences, the Food and Beverage Areas are considered to be in satisfactory condition when the Food and Beverage Areas are in the same or better condition as when Concessionaire moved in (i.e. the commencement of the Prior Agreement). If Concessionaire fails to make, maintain, or keep the Food and Beverage Areas in clean and sanitary condition or fails to perform the necessary maintenance and repairs in accordance with the terms and conditions of this Agreement, the University or UCFCC may, but is not obligated to, perform or hire the necessary contractor to perform the work.

- s. The Concessionaire shall, during the Term , repair any damage caused to real or personal property of the University, wherever situated on the University campus, when caused by the intentional, reckless, or negligent acts or omissions of the Concessionaire’s employees, its subcontractors,.
- t. **Reserve Account.** The Concessionaire shall establish and maintain a Reserve Account for Equipment maintenance, repair, and replacement by funding monthly with an amount equal to Three Percent (3%) Gross Receipts from each Accounting Period. Any funds remaining in the Reserve Account at the end of the Agreement will belong to the University. Concessionaire shall provide UCF a monthly report when it remits Commissions to the University for each Accounting Period, indicating the amount of funds remaining in the Reserve Account and an itemized listing of all funds expended. Unless the parties mutually agree otherwise, the Reserve Account funds shall not be used for any purposes other than as expressly set forth in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, to the extent that the Reserve Account does not have enough funds available to enable Concessionaire to fulfill its obligations under the terms and conditions of this Agreement, the University shall be responsible for such amounts. Under no circumstances shall Concessionaire be required to pay for or advance any of its own funds to perform such obligations that would normally be paid from the Reserve Account. In the event that, notwithstanding the foregoing, the University and Concessionaire agree for Concessionaire to advance its own funds, University shall promptly reimburse Concessionaire for the full amount of such advanced funds.

**3.12 University Obligations**

- a. The University shall provide the Concessionaire with:
  - 1. Office space,
  - 2. concessions stands, and stock room space at the Arena and Venue;
  - 3. Access to campus web services (where available), campus telephone services, and voice answering system at UCF’s standard rate/fee. Pricing for these services can be viewed here: <http://www.cst.ucf.edu/service-catalog/cst-telecommunications/>
- b. The University shall maintain, repair, and replace, as necessary, at its expense the common areas, and each of the exterior portions and structural portions of the Facilities, including, without limitation: the roof and roof supports, footings, foundations, structural supports, columns, exterior walls, bearing walls, retaining walls, floor slab, utility meters, flashings, gutters, downspouts, fire detection and suppression systems; so as to keep the same in good condition and repair.

- c. University shall maintain, repair, and replace, as necessary, at its expense, the following:
1. all plumbing, pipes, drains, tubes and all other conduits and utility lines leading to or from the premises, or leading to or from the building;
  2. electrical switches, outlets, circuit breakers, interior lighting fixtures (including light bulbs and fluorescent tubes and ballast), within the premises;
  3. all electrical wiring, communication/data wiring, plumbing, piping, and HVAC components located within the walls, ceilings, and floors;
  4. the repair or adjustment of storefront, entrance doors, roll-up doors and gates, including door closing mechanisms and locks;
  5. and the repair and/or adjustment of interior doors and hardware, cabinets/cases, millwork, casework, and countertops;

at no additional cost, except in the event that such repair or replacement is required due to the negligence or willful misconduct of Concessionaire, its employees, agents, contracted suppliers, subcontractors, or contractors. Concessionaire's responsibility to make repairs or replacements due to the negligence or willful misconduct of one of its contracted suppliers pursuant to the foregoing sentence shall be limited to circumstances where the supplier was at the Facilities to serve or perform services for the Concessionaire and the damage necessitating the repair or replacement occurred while the supplier was solely serving or performing services for the Concessionaire.

### **3.13 Customer Service & Quality Control**

- a. Performance Metrics. UCF will measure the level of customer service provided by the Concessionaire throughout the Term of the Contract. Customer service metrics are listed on Attachment C. If Concessionaire fails to pass all of the customer service metrics in any particular Contract Year, Concessionaire shall use commercially reasonable efforts to remedy the failures and shall not be considered in breach or default under this Agreement.
- b. UCFCC-Concessionaire Meetings. Concessionaire's General Manager (or his/her designee) will be required to attend specific University, UCFCC or its designee's event planning meetings, as determined at the University's or UCFCC's sole discretion, including without limitation:
  1. Weekly Event Review Meeting;
  2. Management Team Meeting;
  3. The Concessionaire's Regional Manager will meet with the UCF Contract Administrator on a quarterly basis, or as mutually agreed, to review the Concessionaire's performance.
- c. Uniforms/Nametags/Identification Tags. The Concessionaire shall ensure that all its employees wear nametags/identification tags, along with a standardized uniform shirt, subject to UCFCC approval. Concessionaire's employees (and volunteers of any not-for-profit groups engaged by Concessionaire) shall be at all times neatly and cleanly uniformed in UCFCC-approved uniforms and must meet grooming guidelines and appearance standards prescribed for such employee as set forth in Concessionaire's handbook and as mutually agreed by Concessionaire and University.

- d. Customer Feedback. The Concessionaire shall seek customer feedback on a regular basis through methods that include, but are not limited to, customer surveys per semester, student focus groups, customer comment cards, secret shopper programs, etc. Customer feedback results shall be shared with the UCF Contract Administrator for evaluation and input.

**3.14 Staffing / Personnel**

- a. Staffing. The Concessionaire shall be responsible, at its sole cost and expense, to employ all personnel necessary for the efficient operation of a full-service Facility. Staffing levels shall be mutually agreed upon between the parties, provided that Concessionaire maintain an adequate staff at all times to ensure a high-quality operation, including providing a sufficient number of experienced personnel for operational and administrative purposes.
- b. Concessionaire’s employees shall be admitted to the Facilities without payment of an admission fee at an entrance to be designated by the UCF, in such numbers as Concessionaire may reasonably require for conducting the Services.
- c. Organization Chart/Staffing Level. The Concessionaire shall present its organization chart/staffing level to UCF or its designee for discussion and approval for each event, to ensure there will be sufficient on-site staff to provide the required level of service. Changes or reductions to the agreed-upon staffing level shall require discussion with, and approval by, UCF or its designee, which approval shall not be unreasonably withheld, conditioned or delayed.
- d. Manager. The University reserves the right, but is not obligated to, review and approve of the general manager assigned to the Facilities by the Concessionaire (“General Manager”). Subsequent changes in the General Manager will be made by the Concessionaire only after prior consultation with, and approval by, the University. The University expects management continuity (i.e., limited turnover of the General Manager) in order for the Concessionaire to meet the expectations and requirements of the University.
- e. Student Employees. The Concessionaire shall look to fill employment opportunities with UCF students, when appropriate.
- f. Employee Conduct. The Concessionaire shall be responsible for the actions of its employees, agents, and independent contractors hereunder and for the payment of all taxes, wages, benefits and other costs associated with such persons. While on UCF premises, all employees, agents and independent contractors of the Concessionaire shall comply with all applicable University and UCFCC policies and procedures. .

If at any time UCF feels that any employee of Concessionaire if not satisfactory, UCF shall notify Concessionaire of the reason for its dissatisfaction with such employee verbally and in writing.

Concessionaire shall attempt to promptly correct the employee’s conduct to the satisfaction of UCF. If the employee continues to be unsatisfactory to UCF, or if the initial conduct was so egregious as to warrant dismissal, UCF may demand that Concessionaire cease using said employee at UCF. Concessionaire shall promptly comply with such request. University agrees that any requests pursuant to this paragraph shall not be based upon unlawful discrimination in regard to an employee’s race, religion, national origin, age, gender, sexual orientation or disability.

**3.15 Background Checks**

- a. The Concessionaire assumes liability arising out of and is solely responsible for all of the Concessionaire’s employees, agents, or independent contractors pursuant to Section 2.2. The Concessionaire shall provide background checks for all Concessionaire’s employees working at UCF and shall ensure that all background checks have been initiated within seven (7) business days of hire. Background checks are not required for “non-profit” groups and volunteers. Temporary employees hired through a temporary staffing agency shall require the background checks listed herein, and Concessionaire may satisfy this requirement by conducting the background checks directly or having a contract with the temporary staffing agency that incorporates the same requirements. If Concessionaire hires currently enrolled UCF students on a temporary basis, Concessionaire is not required to perform the background checks listed herein.
- b. Convictions discovered in the background check will be reviewed by Concessionaire’s Human Resources department in accordance with applicable laws. To the extent permissible under applicable laws, consideration may be given to the person’s relationship to the job, how long ago the conviction occurred, the potential risk posed to employees, customers, students, and the University and any other circumstances deemed relevant to the final determination of whether to employ or retain the person. Conviction information is to be maintained by Concessionaire as confidential.
- c. Background checks shall include, at a minimum, the following items:
  - 1. National Sex Offenders Registry
  - 2. Statewide Criminal History background check through FL dept. of Law Enforcement
  - 3. Local criminal records check through local law enforcement agencies

**3.16 Food and Beverage Price - Automatic Price Adjustment**

Subject to 3.2(i) above:

- a) Menu items may be changed at any time upon mutual agreement between University and Concessionaire. Concessionaire shall not change menus, quantities served, quality of product, or prices without prior written approval from the University, which approval the University shall not unreasonably withhold, condition or delay.
- b) All food and beverage prices shall include sales tax and shall be priced as multiples of twenty-five cents (\$0.25) (e.g. \$4.00, \$4.25, \$4.50, etc.).
- c) **Concessionaire must submit a request indicating their desire to have annual price adjustment, 60 days prior to July 1<sup>st</sup> of each Contract Year.** If Concessionaire does not request an annual adjustment prior to the deadline, the University is not required to provide an adjustment for the year in question. Price adjustments are not retroactive.
- d) Annual Adjustment of Menu Prices: Food and beverage prices for the “General-Admissions” menu items are subject to an annual price adjustment as described below in Sections 3.16.1 and 3.16.2. For calculating the price adjustment, the average price of all

the menu items (except Alcoholic Beverages and promotional priced items) will be used. The price change calculated will then be applied equally to the individual menu items.

3.16.1 When an annual price adjustment calculation is performed the “actual” price adjustment applied will be determined by rounding (up or down) the “calculated” price to the nearest \$0.25 (twenty-five cents). **The maximum price increase in any year is twenty-five cents (\$0.25) per item.**

- a. Example 1 (increase occurs): If the “calculated” price change is between \$0.13 and \$0.25 the “actual” price shall increase by \$0.25. In example, if the original price was \$4.00 and the calculated price change was an increase of \$0.13, the new price of the item would be set as \$4.25.
- b. Example 2 (no increase): If the “calculated” price change is less than \$0.13 then there would not be any increase applied.
- c. In the event of the situation described in Example 2 (above), when calculating the current year adjustment, where the previous year did not have a price increase applied, the calculated number from that previous year’s calculation would then be added to the current year’s calculated change.
  - i. For example, if the calculated price change for Year 1 was \$0.08 (so no price adjustment was made for Year 1), then in the Year 2 calculation the \$0.08 from Year 1 would be added to the calculated price change for Year 2. Then if in Year 2 the calculated price change was \$0.07, the total the calculated price change would be  $\$0.08 + \$0.07 = \$0.16$  (which results in Year 2 price increase).

3.16.2 Food and beverage pricing changes (for food and beverage served in the General-Admission Seating/Areas) will be adjusted in accordance with the PPI, not seasonally adjusted, over the time period specified, as described below.

- a) The first annual price adjustment shall be applied to those items listed in Attachment B as provided by Concessionaire in its Offer. **Any item not listed on Attachment B is not subject to the annual price adjustment in the second Contract Year.** The University and Concessionaire may add and/or remove menu items from the Attachment B list as mutually agreed to.
- b) Price adjustments shall take effect July 1<sup>st</sup> of each Contract Year of the Agreement, unless otherwise mutually agreed upon between the parties.
- c) The calculation will use the most currently available PPI data. The calculation will compare the “base period” (i.e. June of the prior year) with the “current period” (i.e. June of the current year). All calculations shall be made based on the (preliminary) PPI data available at the time of the calculation (i.e. June data) and shall not be adjusted later in the event the data is later revised by the BLS.

Example: If the contract start date is February 1, 2019, then the first price adjustment, if any, would take effect on July 1, 2020. The calculation is as follows:



- i. The first price adjustment calculation would be based on the published PPI data for the most currently available PPI data available in June 2020 (the “Current” period) and the PPI data for the same month in the previous year (the “Base” period). If the published index for the Base period was 195.5 and the published index for the Current Period is 200.5, the index change would be 5.0 (e.g. the “Current period index – Base period index”), and the percentage change of the index would then be 2.58% (e.g.  $5.0 / 195.5 = 0.0258 = 2.58\%$ ) (the “Index Change divided by Base period index”).
- ii. Then if the price of an item was \$5.00, the price adjustment for that item would be an increase of \$0.13 (e.g.  $\$5.00 \times 2.58\% = \$0.129$ ).
- iii. If the price of the item was \$4.00, the price adjustment for that item would be \$0.10 (e.g.  $\$4.00 \times 2.58\% = \$0.10$ ).

The provisions of this Section 3.16 shall not apply to the prices of any item offered (1) that features products of suppliers who purchase advertising from the University or (2) where Concessionaire’s cost to produce such item materially increases. In each case, the parties agree that the prices of such items or other terms of this Agreement may be adjusted from time to time to maintain profitability of the sale of each item.

### **3.17 Tender Types**

- a. Tender Types. At a minimum, the Concessionaire shall accept cash, major credit cards, and bank debit cards) at all permanent and portable concessions stands locations in the Venue and Arena. The Concessionaire shall be solely responsible for all expenses and collection of debts resulting from cash, credit cards, and bank debit card transactions.
- b. UCF Campus Card. (a.k.a. Knights Cash). Concessionaire in not required to accept the campus card (“Campus Card”). However, the University desires that Concessionaire accept the Campus Card wherever the infrastructure is available (i.e. stand has network access). To accept the Campus Card a “UCF card reader” with network access is required. If Concessionaire proposes/agrees that it will accept the Campus Card then it shall, lease the card-reader hardware and obtain/purchase the network access, from the University at its sole expense. Campus Card transactions are administered by the UCF Business Services department. Business Services will reconcile and reimburse the Concessionaire on a monthly basis for all Campus Card transactions. The Concessionaire shall pay a one percent (1%) transaction fee to Business Services for administration of Campus Card transactions. The Concessionaire shall not increase the price of goods and or services to Campus Card customers in order to offset the Campus Card transaction fee. The Concessionaire and University will periodically review cost effectiveness of accepting the Campus Card.

### **3.18 Technology Compliance**

- a. POS-Cash Register equipment: Concessionaire shall utilize electronic Cash Registers and/or utilize networked Point-of-Sale equipment, at all permanent and portable Concessions Stands, and to track/record the individual items sold by date/time, price, quantity sold, serving size, per sale/stand/event location (i.e. capture sales trends).

- b. Network; PCI Compliance. The University shall provide a segmented network for the Point-of-Sale system and shall be responsible for the security of its network. The Concessionaire shall comply with UCF's Payment Card Industry Data Security Standard (PCI DSS) Policy specified in Appendix VII, except the requirements in Section D.1. of such Appendix.
- c. Europay, MasterCard, And Visa (EMV) Compliance. The Concessionaire is responsible for compliance with EMV standards for authorizing credit and debit card transactions and shall be solely responsible for the losses resulting from non-compliance. Concessionaire may choose to not implement full EMV standards (i.e. not using chip readers and pin technology in order to increase the speed of transactions, etc.) and would be solely responsible for any resulting losses.
- d. Customer Data. Customer data shall not be shared or sold by the Concessionaire without the express written approval of the customer. The Concessionaire shall comply with all requirements regarding the secure handling of UCF Data as described in Appendix V, "Secure Handling of UCF Data."

**3.19 Financial Reporting And Recordkeeping**

- a. Concessionaire shall provide the University with daily sales reports in accordance with Section 2.32.
- b. Concessionaire shall maintain all accounting records for the Food and Beverage Services performed at the Facilities in a format approved by the University at the on-site office. The accounting records shall be available for audit by the University, UCFCC or its designee with reasonable advanced notice, during Concessionaire's regular business hours, throughout the Term of the Agreement at the on-site office, and for three (3) years following the Term of the Agreement at the Concessionaire's main office. If such audit shows a deficiency in payments by the Concessionaire for any Accounting Period covered, Concessionaire shall promptly pay the University the amount of the deficiency. If such audit shows a deficiency in excess of three percent (3%) Concessionaire shall promptly reimburse the University for the reasonable, out-of-pocket costs incurred by the University to conduct the audit.
- c. Concessionaire shall use University-approved hardware and University-approved accounting software, for all Concessionaires financial records, invoices, and all accounting functions and the parties agree that the hardware and software that Concessionaire currently uses is approved.
- d. Concessionaire shall maintain a separate commercial bank account in Orlando, Florida, for all sales deposits.
- e. Cash shortages may not be deducted from Gross Receipts or Commissions.
- f. Bad debts, unless the University or UCFCC required Concessionaire to extend credit, may not be deducted from Gross Receipts or Commissions.

- g. The University shall have access to all sales, POS and management reports, but only to the extent that providing the University with such access does not, in Concessionaire's reasonable opinion, cause Concessionaire to be in violation of any applicable laws, rules or regulations.
- h. Concessionaire and the University shall inventory all Equipment, and Leasehold Improvements and Smallwares, on an annual basis to determine what replacements and repairs are required.
- i. Concessionaire shall maintain all sales tax licenses and operating permits necessary to perform the Services.

**3.20 Payment Terms**

- a. The Concessionaire agrees to pay the University Commissions in accordance with Section 2.32 above and Section 4 below.
- b. Material Breach:
  - i. Reference Section 2.4
- c. Remit payments to the following address:

**UCF Convocation Corporation  
PO Box 662150  
Orlando, FL 32816 - 3222**

**3.21 Investment Requirements**

- a. Ownership of Equipment. Once identified, the specific Equipment purchased with the Investment shall be set forth in a writing to be signed by the parties and updated by the parties from time to time as necessary to reflect any replacements or substitutions thereof. All Technology Equipment purchased with the Investment, including any replacements or substitutions thereof, shall be owned by Concessionaire. All other Equipment (i.e. Equipment that is not Technology Equipment) purchased with the Investment shall be owned by the University. The University hereby grants to Concessionaire a first priority lien on, and security interest in, the Equipment purchased using the Investment (with the exception of the Technology Equipment), including any replacements, substitutions, additions, attachments and proceeds thereof, to secure the University's obligation to pay Concessionaire the Buyout Amount. The University hereby authorizes Concessionaire to file such financing statements and other instruments as Spectra deems necessary to perfect the security interest granted by the University herein. Concessionaire's rights as a secured creditor shall be governed by and in accordance with the terms of the Uniform Commercial Code then in effect in the State of Florida. For the avoidance of doubt, upon expiration of this Agreement (or earlier termination thereof and payment of the Buyout Amount), Concessionaire shall no longer hold a lien on, or security interest in, the Equipment. For the sake of clarity, nothing in this paragraph shall be construed as requiring Concessionaire to replace any Equipment at its own cost.

- b. Depreciation. The portion of the Investment used to purchase Equipment that is not Technology Equipment under the Prior Agreement shall be amortized on a straight line basis over a five (5) year period (at the rate of 1/60 per month) commencing on August 18, 2017. The cost of each item purchased using the portion of the Investment used to purchase Equipment that is not Technology Equipment during the first Contract Year of this Agreement shall be amortized on a straight line basis over the number of months remaining during the Term at the time of purchase. If the University exercises the Renewal Option in accordance with Section 2.3, the cost of each item purchased using the Additional Investment shall be amortized on a straight line basis over the number of months remaining during the Term at the time of purchase. Upon the natural expiration or early termination (for any reason whatsoever, including without limitation if due to a breach, default or bankruptcy event by or affecting Concessionaire) of this Agreement, University shall immediately pay to Concessionaire the unamortized amount of the Investment (the “Buyout Amount”). In the event that University fails to repay Concessionaire the Buyout Amount upon termination or expiration of this Agreement in accordance with the terms hereof, the Buyout Amount shall accrue interest at the rate of one and a half percent (1.5%) per month, or the highest rate permitted by law, whichever is less, and Concessionaire may, at its sole option, (a) continue to perform the Services at the Facilities and be paid for such services as provided hereunder, notwithstanding its receipt of any termination notice from University or the expiration of this Agreement, and/or (b) peacefully reenter the Facilities, with or without process of law, and remove in a commercially reasonable manner the improvements or equipment remaining at the Facilities and retain or dispose of such improvements or equipment as Concessionaire sees fit. In either event, Concessionaire shall retain its right to receive the Buyout Amount. University covenants and agrees not to permit any liens or encumbrances to attach to the leasehold improvements and equipment purchased with the Investment, and hereby waives any right to attach any claim, lien, or attachment to such improvements or equipment. The rights of Concessionaire set forth in this paragraph shall be in addition to any other rights of Concessionaire at law or in equity.
  
- c. University Approvals. Any Leasehold Improvements made using the Investment must meet University’s design and construction standards; must be approved in advance by the University; must comply with all procurement and permitting regulations and all laws; and must be coordinated by the Concessionaire in conjunction with the University. Any third-party contractor used by the Concessionaire to assist with making Leasehold Improvements must be approved in advance by the University and UCFCC.
  
- d. Accounting Of Investment. The Concessionaire shall provide the University with a full accounting of items purchased using the Investment, including copies of invoices paid to vendors for the Investment.
  
- e. Investment Difference. If the total actual amount spent by the Concessionaire on the Investment is less than what is set forth in Section 4 below, then the Concessionaire shall pay the University the difference between the actual amount spent and the amount set forth in Section 4, payable no later than twelve months prior to the Contract’s natural expiration date.
  
- f. Timing Of Facility Investment. See Section 4.

**3.22 “Promotions”**

- a. The University and Concessionaire may mutually agree to run promotions on certain food and beverage items on a “temporary basis”, from time to time, where such promotion could be used to reduce the pricing of a specific menu item, change the quantity of foods/beverages provided, add a new product, or some combination thereof.
- b. In the event the Promotion is expected to reduce the profits of Concessionaire during the time the promotion is running, the University and Concessionaire will then mutually agree on how the Promotion impacts Concessionaire’s profit/costs and the compensation or adjustment Concessionaire is to receive, if any.
- c. Concessionaire and UCFCC must mutually agree to any changes in compensation, commission rates/scales, or additional fees provided prior to the implementation of the promotion. After the promotion ends, all rates/commissions/prices revert back to those before the promotion was implemented.

**SECTION 4: FINANCIALS**

**Commissions**

- 1. Commissions on Gross Receipts. As consideration for the rights granted to Concessionaire hereunder, Concessionaire shall pay University a percentage of Gross Receipts in accordance with the following schedule:

<u>Category</u>	<u>Total Gross Receipts per Contract Year</u>	<u>Commission on Gross Receipts</u>
Concession Sales*	\$0 to \$750,000	36.0%
	In excess of \$750,000	42.5%
Alcohol Sales*	\$0 to \$500,000	40.0%
	In excess of \$500,000	44.0%

\*The foregoing Commissions shall be calculated on an incremental, step-scale basis, as opposed to being retroactive back to dollar 1.

- 2. Subcontractor Sales. Concessionaire shall pay University twenty-five percent (25%) of Net Subcontractor Sales. For the sake of clarity, the parties acknowledge that Concessionaire shall not be obligated to pay University any other payments with respect to Subcontractor Sales. Gross Subcontractor Receipts shall not exceed 20% of Total Receipts in any 12-month period during the Term. Should Gross Subcontractor Receipts in any 12-month period exceed 20% of Total Receipts, Concessionaire shall remit to the University an amount equal to Commissions that would have been due on the incremental Gross Subcontractor Receipts had such Gross Subcontractor Receipts been Gross Receipts. By way of example only, if Total Receipts from Concessions Sales equal \$1,000,000 and Gross Subcontractor Receipts total \$250,000, Concessionaire shall pay the University: (1) 25% of the Net Subcontractor Sales on

the first \$200,000 in Gross Subcontractor Receipts, plus (2) 42.5% of \$50,000, i.e. \$21,250.

3. In the event of a twenty percent (20%) or more increase in local operating costs incurred by Concessionaire to perform its services hereunder, which costs are outside the reasonable control of Concessionaire, Concessionaire may notify University that it desires to renegotiate the financial terms of this Agreement so that Concessionaire is not negatively impacted by such cost increase. In such case, Concessionaire and University shall in good faith renegotiate such terms for a period of at least 30 days. If the parties are unable to come to agreement on such terms, Concessionaire shall have the right to terminate this Agreement upon 120 days prior written notice to University. Notwithstanding the foregoing, the risk of an increase in the cost of procuring food and beverage products from vendors/suppliers shall be borne by Concessionaire and shall not trigger Concessionaire's right to renegotiate under the terms of this paragraph.

**Facility Investment**

- a. Concessionaire agrees to invest up to (but not to exceed) \$250,000 in the first Contract Year at the Facilities for Equipment dedicated to the Services to be performed by Concessionaire hereunder (which shall include a cost equal to 4% of the equipment purchased as an administrative fee for purchasing such Equipment, on-site project management and Concessionaire out-of-pocket expenses in connection therewith). The actual amount invested by Concessionaire hereunder is referred to herein as the "Investment". \$125,000 of the Investment shall be used for the purchase of Technology Equipment and the remaining \$125,000 shall be used for the purchase of Equipment that is not Technology Equipment. The parties may mutually agree to spend any remaining Investment funds allocated to Technology Equipment on Equipment that is not Technology Equipment and vice versa. In the event additional amounts are required to complete the Food and Beverage Areas, or to provide Equipment and/or Smallwares so as to enable Concessionaire to perform the Services to a reasonable standard, University shall be solely responsible for such amounts. If the University exercises the Renewal Option in accordance with Section 2.3, Concessionaire shall provide an additional Investment in the amount of \$40,000 for the purchase of Equipment during the sixth Contract Year ("Additional Investment"). University and Concessionaire shall mutually agree upon the specific Equipment and other improvements to be purchased or made with the Investment, as well as the location for such improvements or installation of such Equipment.
- b. The parties acknowledge that Concessionaire made certain investments in the Facilities during the course of performing services under the Prior Agreement and that such investments shall count towards Concessionaire's obligation to invest up to \$250,000 in the Facilities that is described in subsection (a) above. Specifically, the parties acknowledge that \$53,100.00 was spent under the Prior Agreement to purchase Technology Equipment and that \$49,190.56 was spent under the Prior Agreement to purchase Equipment that was not Technology Equipment. Accordingly, the total amount that Concessionaire shall invest in the first Contract Year at the Facilities for Equipment dedicated to the Services shall be \$147,709.44, comprising \$71,900.00 to purchase Technology Equipment and \$75,809.44 to purchase Equipment that is not Technology Equipment.

**National, Regional, and Local Brands\* proposed by Concessionaire to be used at the Arena**

Subject to Section 3.2(i) above: The use of any of brand(s) shall be determined by Concessionaire and reasonably approved by the University. The University shall have the right to approve in advance of any use of Subcontractors by Concessionaire, which approval shall not be unreasonably withheld. The following brands may be used by Concessionaire:

1) Spoleto – My Italian Kitchen	2) Jimmy Hula’s
3) 4 Rivers Smokehouse	4) Fuji Yama Sushi
5) Bubbalou’s Bodacious BBQ	6) Boar’s Head Cafe
7) Haagen-Dazs	8) Dippin’ Dots
9) Chick-Fil-A	10) Nathan’s (sponsorship limitations may apply)
11) Papa John’s (sponsorship limitations may apply)	

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed on behalf of such party by an authorized representative as of the effective date set forth above.

**UNIVERSITY OF CENTRAL FLORIDA  
BOARD OF TRUSTEES**

**OVATIONS FOOD SERVICES, L.P.  
d/b/a SPECTRA FOOD SERVICES &  
HOSPITALITY**

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

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

Printed: Dale Whittaker

Printed: \_\_\_\_\_

Title: President

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

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

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

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

Printed: Misty Shepherd

Title: Interim Vice President of  
Administration and Finance

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



**ATTACHMENT A**

**UCF OWNED/PROVIDED EQUIPMENT**

**Arena concessions equipment list**

**Quantity**   **Location-Room# /Description**

**2009**

- 4 Cash Register
- 2 Dasani Cooler (Coke)
- 2 Fountain Drink Station (Coke)
- 3 Smoothie/frozen drink station
- 1 Three compartment sink
- 1 Serve well, UCF# 4940 CF136852
- 1 Hatco (food warmer), UCF#4940 CF136851
- 1 Norlake (low boy freezers) M:OF20255/9 S:05060640

**2017**

- 4 Cash Register
- 2 Dasani Cooler (Coke)
- 3 Fountain Drink Station (Coke)
- 1 hotdog
- 2 steam n hold
- 1 Three compartment sink
- 1 Serve well, UCF:4940 CF 136846
- 1 Hatco (food warmer) UCF:4940 CF 136847
- 1 Blue Air (fridge), M:BSR23T S:BTBIA94FB00001
- 1 Citation Warmer, UCF:4940 CF 134304 M:2025ST

**2025**

- 4 Cash Registers
- 2 Dasani Cooler (Coke)
- 3 Fountain Drink Station (Coke)
- 2 steam n hold
- 1 Three compartment sink
- 1 Hatco (food warmer) UCF:4940 CF 136840
- 1 Citation Warmer UCF:4940 CF 136855 M:2025ST
- 1 Norlake (double freezer) UCF:4940 CF 136844 M:NF522555/0 S:07080285
- 1 Norlake (powered food prep station)
- 3 Fryer vats
- 2 Grill, UCF:4940 CF 136838, UCF:4940 CF 136839
- 1 Manitowoc (Ice) UCF:4940 CF 136874

**2029**

- 6 cash Registers
- 2 Dasani Cooler (Coke)
- 3 Fountain Drink Station (only one is attached) (Coke)
- 1 Norlake (double freezer) UCF:4940 CF 136865 M:NF522555/0 S:06111634
- 1 Norlake (double fridge) UCF:4940 CF 136864 M:NF522555/0 S:07080283
- 1 Victory (freezer) M:FA 10 87 S:H0750730

**2033**

- 4 cash Registers
- 1 Dasani Cooler (Coke)
- 3 Fountain Drink Station (Coke)
- 1 Three compartment sink
- 1 Dip n' Dots (small freezer)
- 1 Ice cream (medium cooler)
- 2 Blue Bell (small cooler)
- 1 Portable popcorn machine
- 4 Portable beer carts
- 3 drinks rollers (red)

**2043**

- 5 cash Registers
- 1 Dasani Cooler (Coke)
- 3 Fountain Drink Station (Coke)
- 1 hotdog
- 2 steam n hold
- 1 Three compartment sink
- 1 Hatco (food warmer) UCF:4940 CF 136840
- 1 Citation Warmer UCF:4940 CF 136855 M:2025ST
- 1 Norlake (double freezer) UCF:4940 CF 136844 M:NF522555/0 S:07080285
- 1 walk in cooler (Norlake)
- 1 ice machine (Manitowoc)

**2049**

- 4 cash Registers
- 2 Dasani Cooler (Coke)
- 1 Three compartment sink
- 4 Portable Bar

**KnightFaire 1**

- 2 Fountain Drink station (Coke)
- 2 Ice machine
- 1 Dasani (small) cooler (Coke)

**KnightFaire 2**

- 1 Fountain Drink station (Coke)

**Attachment B  
General Seating Area Menu and Pricing**

<b>ITEM</b>	<b>SIZE</b>	<b>PRICE</b>
<b>4150-3010 Candy</b>		
Candy, Peanut M&Ms	3.5oz Box	\$4.50
Candy, M&Ms	3.5oz Box	\$4.50
Candy, Skittles	3.5oz Box	\$4.50
Candy, Sour Patch Kids	3.5oz Box	\$4.50
Candy, Fruit Snacks	3.5oz Box	\$4.50
<b>4150-3020 Coffee/Hot Chocolate</b>		
Hot, Chocolate	12oz	\$3.00
Hot, Coffee	12oz	\$3.00
Hot, Tea	12oz	\$3.00
<b>4150-3030 Popcorn</b>		
Snack, Student Popcorn	44oz	\$2.00
Snack, Small Popcorn	85oz	\$4.00
Snack, Large Popcorn	130oz	\$6.00
<b>4150-3040 Ice Cream</b>		
Ice Cream Bar, Orgn Crm	3oz	\$4.00
Fruit Bar, Stwby lw	3.5oz	\$4.00
Ice Cream Cup, Choc	3.6oz	\$4.00
Ice Cream Cup, Vnl	3.6oz	\$4.00
Ice Cream Sandwich, Vnl	6oz	\$4.00
Ice Cream, Vnl Crc Dibs	4oz	\$4.00
<b>4150-3050 Soft Drink - Fountain</b>		
Fountain, 22oz Soda	24oz	\$4.00
Fountain, Souvenir Soda	32oz	\$6.00
Fountain, Souvenir Refill	32oz	\$3.00
<b>4150-3060 Bottle Soft Drink/Water</b>		
Bott, 20oz Dasani Water	20oz	\$4.00
Bott, 20oz Dasani Water Student Discount	20oz	\$2.00
Bott, 1L Smart Water	LTR	\$6.00

Bott, 20oz Coke	20oz	\$4.50
Bott, 20oz Coke Zero	20oz	\$4.50
Bott, 20oz Diet Coke	20oz	\$4.50
Bott, 20oz Fanta Orange	20oz	\$4.50
Bott, 20oz Minute Maid Lemonade	20oz	\$4.50
Bott, 20oz Powerade	20oz	\$4.50
Bott, 20oz Sprite	20oz	\$4.50
Bott, Gold Peak Tea	16.9oz	\$4.50
Bott, Dunkin Ice Coffee		\$5.00
Can, Monster Energy Drink	20oz	\$5.00
<b>4150-3070 Hot Dog/Sausage</b>		
Hot Dog	7" Tray	\$4.00
Hot Dog, \$2 Dog	7" Tray	\$2.00
Hot Dog, Chili Cheese	7" Tray	\$6.00
Hot Dog, Chili Cheese Basket	3lb Boat Blk	\$9.00
Hot Dog, Footlong	footlong tray	\$8.00
Hot Dog, The Knight Dog topped with pulled pork	3lb Boat	\$10.00
Sausage, Smoked	7" Tray	\$7.00
Sausage, Chorizo	7" Tray	\$7.00
Italian Sausage w/ Peppers and Onions	3lb Boat	\$8.00
<b>4150-3080 Burgers/Sandwiches</b>		
Burger, BBQ Bacon Cheddar	3lb Boat	\$10.00
Burger, The Knight	3lb Boat	\$10.00
Burger, The Imposible	3lb Boat	\$12.00
Sandwich, Biscuit	Spectra Wrap	\$3.00
Sandwich, Texas Toast	Spectra Wrap	\$4.00
<b>4150-3090 Nacho</b>		
Snack, Cheese Cup	2oz cup	\$1.00
Snack, Nacho -Cheese, Salsa	3 Comp Tray	\$6.00
Bowl, Cuban	16oz Bowl	\$10.00
Sandwich, Cuban	3lb Red Boat	\$10.00
Nacho, Loaded	18oz bowl	\$10.00
Nacho, El Pollo Loco	18oz bowl	\$10.00
Nacho, Mojo Carnitas	18oz bowl	\$10.00
Nacho, Grande	18oz bowl	\$10.00
Taco, El Pollo Loco		\$11.00
Taco, Mojo Carnitas		\$11.00
Taco, Carne Asada		\$12.00

Taco, Vegan		\$10.00
<b>4150-3100 Peanuts/Snacks</b>		
Snack, Peanuts	4oz bag	\$4.00
Snack, Cracker Jacks	3.5oz Box	\$4.00
Snack, Soft Pretzel	5oz	\$4.00
Snack, MM Italian Ice	Cup	\$5.00
Snack, 1.5oz Metro Deli Chips	1.5oz	\$3.00
<b>4150-3110 Fried Foods</b>		
Chicken Tender Basket	2lb BLk Tray	\$9.00
Buffallo Tender Basket	2lb BLk Tray	\$3.00
Chicken Tender Wrap	5lb Boat	\$9.00
Fry Cup	Fry Cup	\$3.00
Tator Tots	Fry Cup	\$4.00
Speciality Fries	3lb Boat	\$9.00
Onion Ring Cup	Tray	\$9.00
Mozzarella Sticks	2lb boats	\$10.00
Fried pickles	2lb boats	\$10.00
<b>4150-3130 Health Foods</b>		
Muffins		\$3.00
Danish		\$3.00
Bagels		\$3.00
Sandwich, Honey Baked Ham	Clear Clam	\$9.00
Wraps, Chicken Ceaser	Tray	\$9.00
Charcuterie Platter	Clear Clam	\$10.00
Hummus & Pita Chips	Clear Clam	\$10.00
Fruit Cup	Clear Cup	\$4.00
Salad, Florida Cobb	Clear Clam	\$9.00
Whole Fruit		\$1.00
<b>4150-3180 Liquor</b>		
20oz Mason Jar ( Specialty Drink)	Can	\$16.00
Liquor, Single	Can	\$8.00
Liquor, Double	Can	\$16.00
Liquor, Single Premium	Can	\$12.00
Liquor, Double Premium	Can	\$22.00
Liquor, Gasoline Pouch	Can	\$9.00
<b>4150-3190 Wine</b>		

Wine, 9oz Cabernet	Can	\$9.00
Wine, 9oz Chardonnay	Can	\$9.00
Wine, 9oz Moscato	Can	\$9.00
Wine, 9oz Pinot Noir	Can	\$9.00
<b>4150-3200 Canned Beer</b>		
16oz Bud	Can	\$7.00
16oz Bud Lt	Can	\$7.00
16oz Corona	Can	\$8.00
16oz Coors Lt	Can	\$7.00
16oz M. Ultra	Can	\$7.00
16oz Miller Lt	Can	\$7.00
16oz Modelo	Can	\$7.00
16oz Funky Buddha	Can	\$8.00
16oz Jai	Can	\$8.00
16oz Goose Island	Can	\$8.00
16oz Kona Big Wave	Can	\$8.00
24oz Bud Lt	Can	\$11.00
24oz M. Ultra	Can	\$11.00
24oz Corona	Can	\$12.00
24oz Modelo	Can	\$12.00
24oz Pacifico	Can	\$12.00
24oz Yuengling	Can	\$11.00
<b>4280-4500 Sub Contractors</b>		
Cheese Pizza	Subs	\$8.00
Pepperoni Pizza	Subs	\$8.50
Chicken Poppers	Subs	\$6.00
BBQ Nachos	Subs	\$8.00
BBQ Brisket	Subs	\$10.00
BBQ Pulled Pork	Subs	\$9.00
Belly Buster Hot dog	Subs	\$8.00
Nathan Hotdog	Subs	\$5.00
BBQ Beans	Subs	\$3.00
Coleslaw	Subs	\$3.00
Garlic Sauce	Subs	\$1.00
Chips	Subs	\$3.00
Mac N Cheese	Subs	\$3.00

**Attachment C**

**Performance Metrics**

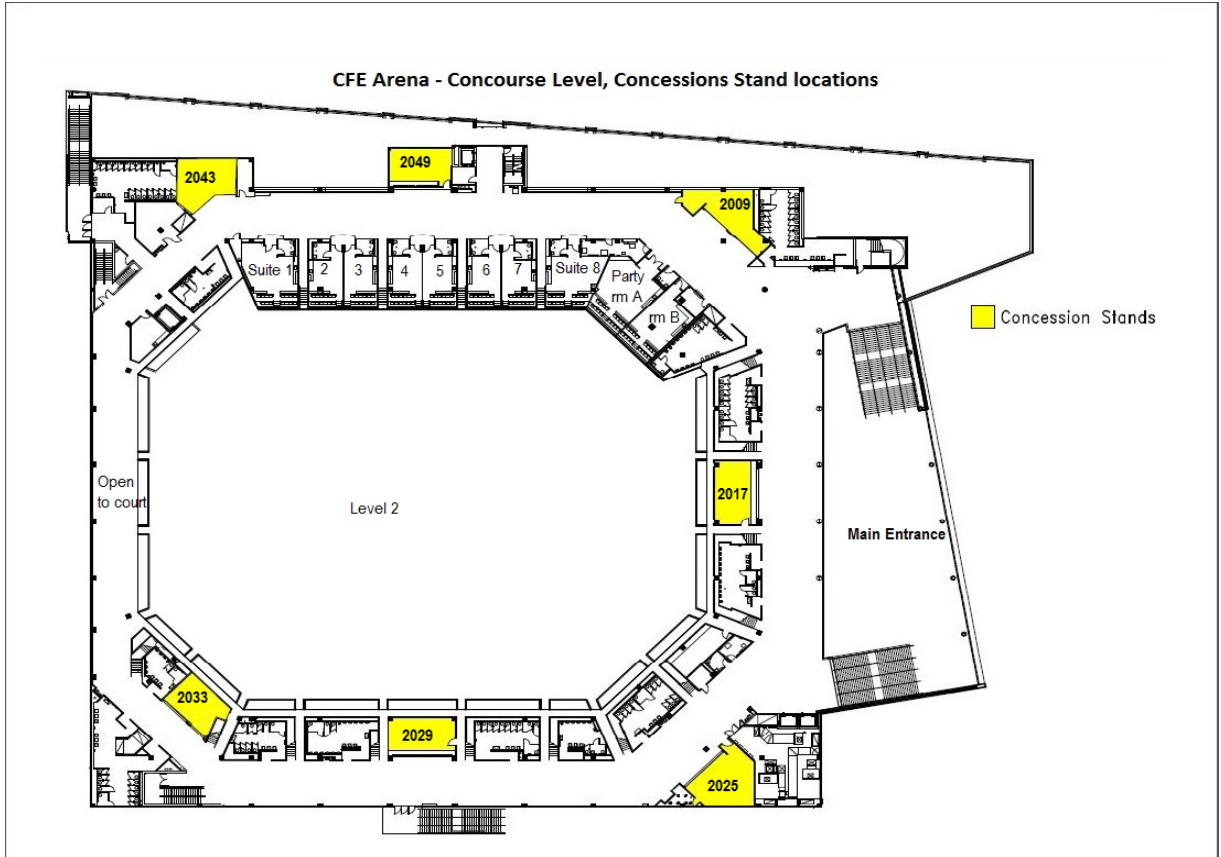
<b>Strategic Objective</b>	<b>Description</b>	<b>Metric</b>	<b>Measurement Frequency</b>	<b>Pass</b>	<b>Fail</b>
Time in Line	Minimize the 'wait time' or time in line for customers	UCFCC to perform random inspections based upon mutually agreed upon acceptable wait times by location; passing is 90% at or below specified wait time	Quarterly		
Health/Safety	Inspections by Florida Department of Health or other regulating food service authority having jurisdiction on UCF property	No unsatisfactory inspection reports; No violations of Occupational Safety and Health Act	As reported by authority having jurisdiction		
Training	Customer service excellence	Concessionaire is to certify staff and NPO groups receive orientation and basic food safety training prior to staffing events; Passing is 100% of staff trained	Quarterly		
Training	TIPS or Responsible Vendor Alcohol Service Training	Concessionaire is to certify staff serving/selling alcohol is TIPS or Responsible Vendor trained; Passing is 100% of staff trained	Quarterly		
Facilities	Quality and consistency of execution of Concessionaire's sanitation, maintenance and repair responsibilities	Random inspections for sanitation and/ or equipment/ facility condition conducted by UCFCC with/without Concessionaire representative based upon mutually agreed upon checklist; Passing is 90% positive inspections. Checklist established within one month of contract execution	Monthly		



<b>Strategic Objective</b>	<b>Description</b>	<b>Metric</b>	<b>Measurement Frequency</b>	<b>Pass</b>	<b>Fail</b>
Staff	Presentation and Appearance	Full compliance to established appearance and uniform standards based on documented pre-event checks of employees; Passing is 90% compliance	Monthly		
Customer Satisfaction	Secret shopper experience and feedback	Satisfactory rating on secret shopper reports; Passing is 80% satisfactory rating (excludes price ratings)	Quarterly		
Customer Satisfaction	Customer experience and feedback	Satisfactory rating on random mutually agreed on guest surveys during/after events; Passing is 80% satisfactory rating (excludes price ratings)	Semi-Annually		
Food and beverage quality	Maintain a level of satisfaction with quality of food and beverage	Satisfactory rating on quality of food and beverage; Passing is 90%	Semi-Annually		

Attachment D

Arena Layout



Attachment B

ITN1724NCSA Concession Food Services Management for UCF Convocation Corporation

Awarded to Ovations Food Services, L.P. dba Spectra Food Services & Hospitality (Spectra)

Agreement Overview

Spectra will provide concession food and beverage management services for the general admissions seating/areas at the CFE Arena and Venue. This contract does not include servicing the premium seating areas, nor does it include catering services.

Upon execution of this agreement, the temporary agreement executed on August 18, 2017 between UCF Convocation Corporation (UCFCC) and Spectra will expire.

Contract Term

The agreement will be for five (5) years and four (4) months, beginning on February 1, 2019 and expiring on June 30, 2024. The University shall have the option to renew the agreement for a mutually agreed renewal term of five (5) years.

Financials

*Capital Investment:* Spectra will invest \$250,000 (\$125,000 facility investment and \$125,000 technology investment). Facility and technology investments provided by Spectra includes qualifying amounts spent under the temporary agreement dated August 18, 2017. The investment spent under the temporary agreement includes \$49,190.56 in the facility and \$53,100 in technology. Investment funds may be used interchangeably between categories.

UCF/UCFCC in collaboration with Spectra will have flexibility in determining the allocation of the investment. Investments made during the temporary agreement shall depreciate on a straight-line basis from August 18, 2017 over a five-year period. All other investments shall be fully depreciated on a straight-line basis over the number of remaining months on the contract, from date of purchase, with no interest accumulated. If the agreement is renewed, Spectra will invest an additional \$40,000 in year 6 and shall be fully depreciated over the five-year renewal term.

All capital investments and fixtures will become the property of UCFCC. If the contract, or extensions thereto, ends for any reason, then UCFCC will reimburse Spectra for the undepreciated portion of the capital investment in the arena facilities, and all capital investments and fixtures shall become the property of the UCFCC.

If the actual amount spent by Spectra on the facility investment is less than \$250,000 then Spectra shall pay UCFCC the difference between the actual amount spent and the amount offered, payable by no later than twelve months prior to the agreement's natural expiration date. No UCF/UCFCC funds will be used.

*Commissions:* Spectra will pay UCFCC commissions on gross receipts as follows:

Category	Total Gross Receipts per Contract Year	Commission on Gross Receipts
Concession Sales	\$0 to \$750,000	36.0%
	In excess of \$750,000	42.5%
Alcohol Sales	\$0 to \$500,000	40.0%
	In excess of \$500,000	44.0%

Subcontract Sales (Net Sales) shall be 25.0% commission.

Pricing

Menu items and pricing are mutually agreed upon between UCFCC and Spectra in writing. All food and beverage prices include sales tax and are priced in multiples of twenty-five cents (\$0.25) (e.g. \$4.00, \$4.25, \$4.50, etc.) Spectra may request price adjustments 60 days prior to July 1<sup>st</sup> of each contract year. Due to the timing of this contract award, a price adjustment may not be requested before July 1, 2020.

UCFCC and Spectra reviewed pricing of items relative to fan experience (ie, water, popcorn, hot dogs, etc.) Local sports arenas and other university arenas were surveyed and the pricing at UCFCC is within market pricing for a commission structured agreement; in most cases, the pricing at UCFCC is equal to or better. Pricing will be surveyed annually to ensure UCFCC is within market pricing.

Spectra has agreed to add a minimum of 2 combo deals in all open permanent concession stands and additional kid items to the menu offering. Additionally, the concession stand behind the student section offers special priced items (i.e., \$2 hotdogs, \$2 water) with a valid student id. Spectra will agree to reductions in pricing as requested by UCFCC, where appropriate, however, this will have a direct effect on the commissions received by UCFCC. For example, if an item is priced 25% less, then the commission received by UCFCC will be reduced by 25%, etc. Using water as an example, UCFCC currently sells water at \$4 and based on prior year records, received commissions of \$32,891.04; selling water at \$3 would have reduced commissions to \$24,668.28. UCFCC maintains that it prefers not to reduce prices since commissions will be lost.

Performance Metrics

UCFCC will measure the level of customer service and contract compliance by Spectra. The metrics are listed below.

Strategic Objective	Description	Metric	Measurement Frequency	Pass	Fail
Time in Line	Minimize the 'wait time' or time in line for customers	UCFCC to perform random inspections based upon mutually agreed upon acceptable wait times by location; passing is 90% at or below specified wait time	Quarterly		

<b>Strategic Objective</b>	<b>Description</b>	<b>Metric</b>	<b>Measurement Frequency</b>	<b>Pass</b>	<b>Fail</b>
Health/Safety	Inspections by Florida Department of Health or other regulating food service authority having jurisdiction on UCF property	No unsatisfactory inspection reports; No violations of Occupational Safety and Health Act	As reported by authority having jurisdiction		
Training	Customer service excellence	Concessionaire is to certify staff and NPO groups receive orientation and basic food safety training prior to staffing events; Passing is 100% of staff trained	Quarterly		
Training	TIPS or Responsible Vendor Alcohol Service Training	Concessionaire is to certify staff serving/selling alcohol is TIPS or Responsible Vendor trained; Passing is 100% of staff trained	Quarterly		
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Staff	Presentation and Appearance	Full compliance to established appearance and uniform standards based on documented pre-event checks of employees; Passing is 90% compliance	Monthly		
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Customer Satisfaction	Customer experience and feedback	Satisfactory rating on random mutually agreed on guest surveys during/after events; Passing is 80% satisfactory rating (excludes price ratings)	Semi-Annually		

<b>Strategic Objective</b>	<b>Description</b>	<b>Metric</b>	<b>Measurement Frequency</b>	<b>Pass</b>	<b>Fail</b>
Food and beverage quality	Maintain a level of satisfaction with quality of food and beverage	Satisfactory rating on quality of food and beverage; Passing is 90%	Semi-Annually		

ITEM: FFC-3

**University of Central Florida  
Board of Trustees  
Finance and Facilities Committee**

**SUBJECT:** Subway Contract Amendment

**DATE:** January 24, 2019

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**PROPOSED COMMITTEE ACTION**

Approve up to two five-year retail lease renewal options for Subway at Knights Plaza.

**BACKGROUND INFORMATION**

Subway has been a lease tenant of the UCF Convocation Corporation (and now the university) since its inception in 2007. They are a long-term tenant with a good track record of paying rent. The two five-year renewal options will allow Subway to refresh its current space as required by the franchise and amortize that cost over time. The Subway Franchisee expects to invest \$100,000 in Subway's current "Fresh Forward" concept. The refresh includes new furniture, fixtures, equipment, graphics, paint, and signage. The first renewal option will occur beginning March 29, 2022.

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**Supporting documentation:** Attachment A: Lease Amendment

**Prepared by:** Ronnie Lamkin, General Manager, UCF Convocation Corporation

**Submitted by:** Misty Shepherd, Interim Vice President for Administration and Finance

Attachment A

**FIRST AMENDMENT TO THE AGREEMENT  
by and between  
UPI, LLC  
and  
SUBWAY REAL ESTATE, LLC**

This first amendment (“Amendment”) is entered into effective upon execution by both Parties (“the Amendment date”) and shall amend and modify that certain lease agreement by and between Subway Real Estate Corp. (the “Tenant”) and UPI, LLC (the “Landlord”):

WHEREAS, UPI LLC and Subway Real Estate, LLC entered into a certain lease agreement, dated effective on the 26<sup>th</sup> day of July, 2006 and commencing on the 29<sup>th</sup> day of March 2007 (the “Agreement or Lease”); and

WHEREAS, except as amended herein all the terms and conditions of the Lease remain in full force and effect:

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. Effective as of August 1, 2015 the “Landlord” shall be defined as “University of Central Florida, and Its Board of Trustees.”
2. Effective as of the Amendment date, Section 4 of the Lease- Term- is amended to add:

(d) Additionally, Two (2) 5-years’ renewal options as stated: provided no default has occurred in the observance or performance of any of Tenant’s obligations or agreements hereunder which remains uncured at time of lease renewal, Tenant shall have the right, to renew this Lease for the Renewal Term. If Tenant chooses to not renew under these terms, Tenant shall deliver to Landlord notice of Tenant’s intention to not renew no later than 180 days prior to the expiration of the then- current Term. The Renewal Term shall be based upon the same terms and provisions set forth herein, except that Base Rent shall be increased consistent with terms for the Extended Term. Tenant’s failure to provide notice by the applicable Renewal Notice Deadline shall be deemed a waiver of all remaining Renewal Options. The first of these option periods shall commence on March 29, 2022 and expire on March 28, 2027.

3. All terms and conditions of the Lease not expressly amended by this First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, each of the undersigned is a duly authorized and valid existing representative of their respective party and each has executed this Amendment to be effective as of the date first above written.



**University of Central Florida, and  
Its Board of Trustees**

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

Printed Name:

Title:

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**Subway Real Estate, LLC**

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

Printed Name:

Title:

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_