

BOOKSTORE MANAGEMENT AND OPERATIONS AGREEMENT

This Management and Operations Agreement ("Agreement") is made and entered into as of this 1st day of January, 2018 ("Effective Date"), by and between **MT. SAN ANTONIO COLLEGE AUXILIARY SERVICES CORPORATION**, a non-profit 501(c)(3) ("Auxiliary" or "Mt. SAC Auxiliary Services"), and **BARNES & NOBLE COLLEGE BOOKSELLER'S LLC** ("Vendor" or "Barnes & Noble College" or "Contractor"), who agree as follows:

WHEREAS, Auxiliary maintains bookstore service facilities and operations for the benefit of students, employees, and the community of the Mt. San Antonio Community College District ("College District", "Mt. San Antonio College", "Mt. SAC") pursuant to an agreement titled "Master Agreement by and between Mt. San Antonio Community College District and Mt. SAC Auxiliary Services" and the amendments thereto (collectively ("Master Agreement")); and

WHEREAS, Auxiliary desires to contract with and rely upon persons who are specially trained, experienced, and competent to furnish special services and advice in the areas of the administrative, financial, economic, and operations aspects of bookstore service operations, including, but not limited to special services and advice in connection with ordering, purchasing, storing, issuing, preparation, distribution, and merchandising of services and items traditionally offered in a college bookstore; and

WHEREAS, the Auxiliary solicited proposals pursuant to that document titled Request for Proposal for Bookstore Management Services (RFP #3137) ("RFP"); and

WHEREAS, Barnes & Noble College responded to the RFP and was selected by the Auxiliary to manage and operate Bookstore Services, as defined below; and

WHEREAS, Barnes & Noble College is a recognized expert in those administrative, financial, economic, and operational areas and aspects of bookstore service operations, having on its staff persons who are specially trained and competent to furnish the special services and advice required and described above.

ARTICLE I **PURPOSE OF THIS AGREEMENT**

1.1 **Purpose of Agreement.** This Agreement sets forth the terms and conditions upon which Auxiliary retains Barnes & Noble College to manage and operate Bookstore Services, as defined below, for College District's students, faculty, staff, employees, visitors, and invited guests.

1.2 **Independent Contractor.** This is not an employment contract. Barnes & Noble College's relationship with the Auxiliary will be that of an independent contractor and not that of an employee or supervisor. Barnes & Noble College will not be eligible for any employee benefits. Barnes & Noble College will be responsible for bill paying and accounting functions related to the Bookstore (as defined in Section 6.1), including sales tax collection, reporting and payment for merchandise sold, except any property, excise, or municipal taxes on the Bookstore. Barnes &

Noble College agrees to indemnify and hold the Auxiliary harmless from any liability for, or assessment of, any such taxes imposed on the Auxiliary by relevant taxing authorities except any property, excise, or municipal taxes. Barnes & Noble College will have no authority to enter into contracts that bind the Auxiliary or create obligations on the part of the Auxiliary. Barnes & Noble College is an independent contractor and is responsible for providing Unemployment Insurance and Worker's Compensation coverage for Barnes & Noble College's employees and for payment of all federal, state and local payroll taxes for and on behalf of Barnes & Noble College's employees. Barnes & Noble College retains control of its employees with respect to all matters.

1.3 Regulations and Policies. Auxiliary shall direct Barnes & Noble College to the online location of or provide Barnes & Noble College with copies of the College District's existing applicable board policies, administrative regulations, guidelines and collective bargaining agreements (collectively "Regulations and Policies") relevant to the services provided by this Agreement. Barnes & Noble College shall be responsible for complying with any applicable Regulations and Policies. This Agreement is subject to and shall not conflict in any way with the Master Agreement.

1.4 General Auxiliary Expectations for Barnes & Noble College. Although not an exhaustive list, the following are general desires and expectations of the Auxiliary regarding Barnes & Noble College's performance under this Agreement. The Auxiliary expects that Barnes & Noble College will provide a high quality, full-service Bookstore operation to the Mt. SAC Community. Barnes & Noble College shall provide Mt. SAC with the services and innovation expected of a high quality Bookstore, including labor, management, supervision, supplies, materials, textbooks, reference and trade book offerings, and a textbook rental program. Barnes & Noble College shall provide pleasant and courteous staff members and leaders that demonstrate professional responsibility to customer service issues. Barnes & Noble College is expected to participate in the College District community and will partner with the internship and work study programs. Satisfaction of these expectations is material to the performance of this Agreement.

1.5 Transition and Expectations Meetings. Auxiliary and Barnes & Noble College shall participate in a transition meeting in accordance with Exhibit "A," attached hereto and incorporated by this reference, within thirty (30) days of the Effective Date. Additionally, during the first year of the Agreement, Auxiliary and Barnes & Noble College agree to meet quarterly to participate in meetings directed toward the achievement and promotion of excellence in customer service ("Expectation Sessions"). Thereafter, Auxiliary and Barnes & Noble College agree to participate in Expectations Sessions throughout the term of this Agreement with a minimum of one (1) per contract year.

ARTICLE II **DEFINITIONS**

2.1 Accounting Period. Mt. San Antonio College's accounting period shall be based on a fiscal year accounting period that commences on July 1st of each year and ends on June 30th of each year ("Fiscal Year"), with current Fiscal Year being July 1, 2017 through June 30, 2018.

2.2 Campus. The Mt San Antonio Community College Campus is located at 1100 North Grand Ave., Walnut, CA 91789.

2.3 Campus Customers. Mt. San Antonio College (students, staff, faculty, and visitors), Mt. San Antonio College Auxiliary and Mt. San Antonio College Foundation.

2.4 Charge. A retail price established by Barnes & Noble College for goods or services provided by Barnes & Noble College to its customers.

2.5 Days. Calendar days unless otherwise stated.

Barnes & Noble College shall operate the Bookstore on a schedule that accommodates the academic calendar of the Mt. SAC community. At a minimum, operating hours are to be from **Monday-Thursday 7:45am-6pm and Friday 7:45am-4pm**. Other operating hours may be requested by Mt. SAC to accommodate the start of an academic semester or special events, and under such circumstances, Barnes & Noble College should make every effort to operate the Bookstore during such hours. Changes in the operating hours described above shall be approved by Mt. SAC.

2.6 Gross Sales. Gross sales shall be defined as all collected sales at the Bookstore, including textbook rentals and all sales from the bookstore website, less voids, refunds, sales tax, discounted departmental sales, handling fees associated with non-return of rental textbooks, campus debit card fees, discounted faculty/staff sales, pass-through income, merchandise sales at less than a 20% initial gross margin, and other merchandise mutually designated as non-commissionable, including computer software and Apple computer hardware.

2.7 Premises. Auxiliary's Bookstore Service facilities located at the Campus, in Building 9A.

ARTICLE III TERM AND TERMINATION

3.1 Term and Termination.

A. Term. The initial contract shall commence on January 1, 2018, and continue for a period of five (5) years ending on December 31, 2022. If it is deemed to be mutually beneficial to both Mt. SAC and Barnes & Noble College, both parties can mutually agree to renew the Contract for an additional five (5) year period.

B. Termination.

1) For Cause:

a) In the event the Contractor fails to carry out or comply with any of

the terms and conditions of the established contract, the Mt. SAC Auxiliary Services may, without prejudice to any other right or remedy, serve written notice upon the Contractor and its surety of intention to terminate this Agreement, such notice to contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such notice such condition or violation shall cease, and/or satisfactory arrangements have been made for the correction thereof, this Agreement shall upon the expiration of said ten (10) days, cease and terminate.

- b) In such case, it shall be incumbent on the Contractor to continue operation until relieved by a subsequent bookstore service Contractor chosen by the Mt. SAC Auxiliary Services (not to exceed eighteen (18) months). The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the Mt. SAC Auxiliary Services.

2) For Convenience

- a) Either party may terminate this agreement with nine (9) months written notice prior to the end of the then current five (5) year term.

3.2 Effect of Termination. All non-disputed outstanding amounts owed Barnes & Noble College shall become due and payable within thirty (30) days of notification of termination by Auxiliary or Barnes & Noble College.

All commissions will be paid to Mt. SAC on sales up to the final day the Bookstore is operated under the Agreement. The commission due Mt. SAC for any portion of an Agreement year shall be based on the calculated commission.

ARTICLE IV
EMPLOYEES

4.1 Barnes & Noble College Employees. Barnes & Noble College shall provide sufficient and qualified employees throughout the term of this Agreement.

4.2 Barnes & Noble College Employees. All Bookstore Service employees shall be Barnes & Noble College employees except as provided for in Section 4.7 of this Agreement. Barnes & Noble College has the right to set its own wages and benefits for Bookstore employees. Barnes & Noble College will employ students of Mt. San Antonio College at the Bookstore whenever reasonably possible. Mt. San Antonio College Bookstore personnel shall continue service only so long as their work and personal behavior are acceptable to Barnes & Noble College and Mt. San Antonio College. Barnes & Noble College will comply with written requests by Mt. San Antonio College to remove or reassign a store employee for good cause.

4.3 Personnel Obligations. Each Party hereto shall be solely responsible for all personnel actions regarding employees on its respective payroll. Each Party shall withhold all applicable federal, state and local employment taxes and payroll insurance with respect to its employees, insurance premiums, and contributions to benefit and deferred compensation plans, licensing fees and workers' compensation costs and shall file all required documents and forms. Notwithstanding the above, Barnes & Noble College shall supervise the six (6) existing Full-Time Auxiliary Employees, as set forth in Section 4.7 below. The six (6) existing employees shall follow all Barnes & Noble College policies and procedures. Each Party shall indemnify, defend and hold the other harmless from and against any claims, liabilities and expenses related to or arising out of the indemnifying Party's responsibilities set forth in this Article 4.3.

4.4 Equal Opportunity and Affirmative Action Employer. Neither Party shall discriminate because of race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, or status as a Vietnam veteran, or any other basis protected by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning Bookstore Service employees. Each Party affirms that it is an equal opportunity employer. The staffing, promotion, placement or assignment of managers who work on this account must be done without any preference or limitation based on race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, Vietnam Veteran status, or any other basis protected by applicable law. This obligation applies to the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning Barnes & Noble College's employees. Under no circumstances will Barnes & Noble College permit a request or suggestion by Auxiliary to place a particular manager in an account to override its non-discrimination policy.

In addition, Barnes & Noble College affirms that it is an equal opportunity and affirmative action employer, is legally responsible for all of its employment decisions affecting its own employees, which include thousands of extremely talented and diverse managers, and shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, Executive Order 11246; Rehabilitation Act of 1973; Vietnam Era Veterans Readjustment Assistance Act of 1974; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act; and any additions or amendments thereto.

4.5 Identification. Barnes & Noble College agents and employees shall wear an identification badge while on the Campus.

4.6 Fair Labor Standards. Barnes & Noble College agrees to comply with all applicable Federal, State and local regulations governing or relating to conditions of employment for its employees, which may include, but are not limited to, the Fair Labor Standards Act, the Employee-Right-to-Know Program, Americans with Disabilities Act, and the Employee Injury and Illness Prevention Program. All material related to personnel policies and procedures of the Bookstore must be available for review by Mt. SAC.

4.7 Current Full-Time Auxiliary Employees. Barnes & Noble College will provide a five (5) year fair trial period for the existing employees, including the Bookstore Director based

on the following conditions: Barnes & Noble College shall employ and supervise at its expense up to six (6) identified Auxiliary employees ("Full-Time Auxiliary Employees"), who demonstrate satisfactory employee performance for a minimum period of twelve (12) months from the Effective Date of this Agreement. Upon successful evaluation from Barnes & Noble College, the employees will be retained for the following twelve (12) month period. During the twelve (12) month period, the six (6) employees shall retain full-time positions with appropriate salary, benefits, employer contributions, including employer retirement contributions, any increase in Step, COLA, Health & Welfare benefits, and any negotiated increases as approved by the Auxiliary Board and as set forth in Exhibit "B," attached hereto and incorporated by this reference.

Barnes & Noble College shall train and review, and shall exclusively supervise, manage and direct up to six (6) Full-Time Auxiliary Employees identified in Exhibit B in the performance of the Bookstore Services, in accordance with Barnes & Noble College's operating policies and procedures and in accordance with Auxiliary's employment (hiring, discharging, and disciplinary) practices. Auxiliary, as the general employer of the Auxiliary Employees, shall hire, discharge or discipline Auxiliary Employees upon Barnes & Noble College's reasonable request if such action is in accordance with Auxiliary's employment policies and procedures.

Barnes & Noble College will reimburse monthly salaries, benefits, employer contributions, and health and welfare benefit costs as set forth in Exhibit "B" for the six (6) existing full-time employees within 30 days of receipt of the invoice. Mt. SAC will handle the payroll processing payment of employer contributions and employee deductions, payment of health benefits, payment of CalPERS, and submission of W-2s and other mandated reports for the six (6) employees that will remain on the Auxiliary payroll.

Barnes & Noble College is not responsible for any salary or benefits costs accrued prior to the transition. Any reimbursed employee that is terminated either voluntarily or involuntarily will be replaced by a Barnes & Noble employee or not replaced at all.

4.8 Current Part-Time Auxiliary Employees. Current part-time Auxiliary employees are available for Barnes & Noble College to interview and hire, at Barnes & Noble College's discretion.

4.9 Current Mt. SAC Holidays. Barnes & Noble College shall match the College's holidays and the six (6) reimbursed employees will continue to have those holidays as paid holidays as part of the continuing status quo benefits.

4.10 Barnes & Noble College Employee Conduct. All Barnes & Noble College employees shall abide by all existing rules, regulations and policies of the College District, Auxiliary and Los Angeles County Health Department and any other applicable agency or entity while on the Campus. Barnes & Noble College shall be responsible for all Barnes & Noble College employee evaluations.

4.12 Work Study Program. At its discretion, Barnes & Noble College, in conjunction with the College District's Federal Work Study Program, shall employ College District work study

students in the Bookstore. Should Barnes & Noble College employ District work study students, Barnes & Noble College agrees to pay a portion of the students' hourly rate of pay in cooperation with the Federal Work Study Program. These employees will be supervised by the Bookstore Director and will remain on the Mt. San Antonio College's payroll.

4.13 Bookstore Director. After the initial five (5) year contract, the current Bookstore Director shall be given the opportunity to be considered for selection as the ongoing manager. The Director of Bookstore Services assigned to the Campus shall be selected with the approval of the College District's Vice President of Administrative Services/President of Auxiliary Services Board of Directors. The person(s) shall not be changed more than once per year unless requested by the College District's Vice President of Administrative Services or mutually agreed upon between the College and Barnes & Noble College and not without a thirty (30) day written notice. Replacement selection shall be made in a manner that is acceptable to the College. Barnes & Noble College shall provide the Auxiliary with contact information for the Director of Bookstore Services or their designate, who shall be available during all business hours and available any time in case of emergency.

4.14 Parking. Barnes & Noble College employees may obtain parking permits from the Department of Public Safety, in accordance with the rules and requirements set forth by the Department of Public Safety.

ARTICLE V

INVENTORIES, PREMISES, EQUIPMENT, AND MAINTENANCE

5.1 Premises and Equipment. Auxiliary shall furnish at its expense, the Bookstore premises "(Premises)" and Bookstore Service equipment ("Bookstore Service Equipment") existing at the time this Agreement is executed. Auxiliary shall also provide a furnished office space for the Director of Bookstore Services, as existing at the time this Agreement is executed. Safes for the temporary holding of funds shall be available at the Premises. Barnes & Noble College shall take reasonable and proper care of the Premises and Bookstore Service Equipment and shall return them at the conclusion of the Agreement in the same condition as they received them, reasonable wear and tear accepted.

Mt. San Antonio College shall also provide to Barnes & Noble College the following at Mt. San Antonio College's expense: Heat, light, utilities, and air conditioning as is reasonably required for operation of the Bookstore. All repairs and maintenance for the building and the physical structure in which the Bookstore is located. Trash and recycling (cardboard) removal, and extermination services for the Bookstore.

The Bookstore operated by Barnes & Noble College shall be operated in the existing Bookstore space. Additions to, or deletions from existing space, or relocation of the Bookstore, must be agreed upon in writing by Barnes & Noble College and Mt. SAC's Vice President, Administrative Services. Any costs associated with such changes shall be negotiated between Mt. SAC and Barnes & Noble College. Any modifications may require the approval of the State Architect and must be approved by College project management staff and overseen by inspectors certified by the Division of State Architect.

Upon occupancy of the Bookstore, Mt. SAC will re-key all interior and exterior doors to a *restricted key* hierarchy. This will allow the Bookstore to be re-keyed in such a manner that it will be totally independent of all other areas of the campus, and no prior occupants and/or current faculty or staff will have key access into the space. Written authorization from a Barnes & Noble College representative will be necessary for any key issuance.

Campus Safety and Facilities Maintenance will each be issued a *restricted key*, allowing entrance into and throughout, the Bookstore. Campus Safety and Facilities Maintenance will limit entrance into the space to emergency situations only. Access to keys for the space will be controlled and tracked in both areas by using key control technology.

Barnes & Noble College shall provide all office machines, equipment, and supplies required for the efficient conduct of business. Barnes & Noble College may elect to utilize equipment already in place in the Bookstore, but shall accept the equipment in an "as is" condition and be responsible for future maintenance of such equipment. Any equipment so utilized will remain the property of Mt. SAC upon termination of the contract in the same condition as when accepted for use, normal wear and tear excepted. Barnes & Noble College shall be responsible for any loss or damage to property owned by Mt. SAC that is in Barnes & Noble College's possession or control or is caused by Barnes & Noble College or its employees or agents in the course and scope of their employment.

Barnes & Noble College shall be responsible for providing such additional equipment and fixtures as may be necessary. In order to provide the best possible service for Mt. San Antonio College's students, faculty and other customers, final approval and necessary alterations of any Bookstore plans will be granted to Barnes & Noble College to ensure they meet with Barnes & Noble College's minimum operational and retailing standards, subject to code compliance review by Mt. SAC Facilities Planning & Management.

Barnes & Noble College will also provide all operating expenses (less utility expense) of the Bookstore including those related to: Maintenance, upgrades and repair of technology systems within the Bookstore. General custodial services. Loss prevention services. Long distance telephone services through a vendor selected by Barnes & Noble College.

Mt. SAC will be responsible for major structural repairs to the space used by Barnes & Noble College provided that such repairs are not required as a result of the actions of Barnes & Noble College its agents, or employees. The existing Bookstore building is known to contain hazardous materials. However, to the best of its knowledge, Mt. San Antonio College is not aware of any health or environmental problems which currently exist or are likely to develop in the building or physical facility which houses the Bookstore. Mt. San Antonio College shall be responsible for remedying promptly any health or environmental problem at the Bookstore, other than those caused by Barnes & Noble College, and notifying Barnes & Noble College accordingly.

Barnes & Noble College and Auxiliary shall inventory the Bookstore Service Equipment provided by the Auxiliary. Auxiliary and Barnes & Noble College shall sign a written

inventory list of such equipment which shall be attached hereto and incorporated by this reference as Exhibit "C". The inventory list shall note the condition of the Bookstore Service Equipment as of the date the inventory list is completed.

For purposes of this Article, Bookstore Service Equipment shall include equipment that is built-in or permanently affixed to a building or structure ("Group 1") and moveable and specialized equipment that plugs in, is wired to a disconnect, or is plumbed indirectly ("Group 2").

5.2 Condition of Premises and Equipment. The Premises and Group 1 Bookstore Service Equipment provided by Auxiliary for use in the Bookstore Service operation shall be in operable condition.

5.3 Equipment Costs. In addition to other costs set forth in this Agreement, Barnes & Noble College shall be responsible for the following costs:

- A. Any costs associated with maintenance and repair of all office machines and equipment, except for current and existing phone equipment. Current and existing phone equipment will be maintained by Mt. SAC unless damaged by Barnes & Noble College. Any handsets showing physical damage during the course of this agreement would be replaced and billed to Barnes & Noble College at \$175 per unit. Barnes & Noble College will be responsible for maintenance costs on existing equipment upon the normal expiration date(s) of those existing contracts.
- B. Costs associated with any additional equipment and fixtures as may be necessary for the operation of the Bookstore.

5.4. Janitorial and Pest Control Service.

- A. Janitorial Services. Barnes & Noble College shall be responsible for daily cleaning services in and around the bookstore interior, including provision of basic janitorial equipment and supplies, sweeping, dusting, and removal of trash to designated refuse collection areas.
- B. Auxiliary's Responsibilities. Auxiliary shall provide and maintain adequate fire extinguishing equipment for the Premises and shall be responsible for removal of trash from refuse collection areas. Auxiliary shall be responsible for any costs involved in setting up and cleaning the Premises for functions not managed Barnes & Noble College.
- C. Pest Control. Mt. SAC will provide extermination services for the Bookstore.

5.5 Telephone and Internet Costs.

- A. All long distance telephone charges and related costs shall be the sole responsibility of Barnes & Noble College.

- B. All internet and related costs shall be the sole responsibility of Barnes & Noble College. This includes, but is not limited to, installation costs, billing costs, broadband internet access costs, any pathways, infrastructure, cable or fiber work that is required to satisfy Barnes & Noble College's internet and/or business automation needs. The terms of the College's existing internet service do not allow the College to provide internet service to any for profit entity.
- C. Barnes & Noble College acknowledges that all external internet/telecommunications services terminate in one of two locations (MPoE) on the Campus. Any work required in establishing Barnes & Noble College's internet connection must be coordinated with the College District's Information Technology Department, so as not to interfere with College District activities, as determined by the College District and Auxiliary. The College will provide transport for Barnes & Noble College's internet connection from the MPoE to the Bookstore facility utilizing a single existing fiber pair. Additional fiber pairs, if desired and available, would be leased to Barnes & Noble College at the rate of \$100 per month.
- D. It is expected that Barnes & Noble College will provide their own support for its internet connection. Should Mt. SAC staff be requested for any support that doesn't directly involve service to the transport fiber, Barnes & Noble College will be billed as follows:
 - 1) Mt. SAC's support hourly rate is \$90 per hour – per technician. Most network and telecommunications troubleshooting requires two (2) technicians.
 - 2) After Hours support will be billed at a 4-hour minimum (per the Union Contract), per technician at the overtime hourly rate of \$120 per hour.

5.6 Preventative and Routine Maintenance. Barnes & Noble College shall establish a preventive maintenance program for all existing Bookstore Service Equipment. Barnes & Noble College shall maintain furniture, fixtures and Bookstore Service Equipment such as, signage and displays. Barnes & Noble College shall replace lamps in all fixtures. At the expiration of the contract, all pre-transition Bookstore Service Equipment and the Premises are to be surrendered to the Auxiliary in as good condition as received, with the exception of ordinary wear and tear.

5.7. Daily Maintenance and Cleanliness. Barnes & Noble College shall be responsible for housekeeping in all areas of the Bookstore. Barnes & Noble College shall maintain floors in the Bookstore in a clean and presentable manner, and transport refuse to designated refuse collection areas (dumpsters). Barnes & Noble College shall be responsible for cleanliness of the restrooms, receiving docks, and dumpster area in the Bookstore. Barnes & Noble College shall maintain the areas surrounding the dumpsters in a reasonably clean manner. Auxiliary may examine sanitation reports and perform spot checks at any time. Barnes & Noble College shall

maintain clean, dry floors in the Bookstore at all times. Barnes & Noble College shall clean up spills immediately and as required.

5.8 Major Maintenance. Barnes & Noble College is not responsible for major maintenance. The College District shall be responsible for maintenance and repair of the buildings and of all plumbing, heating, air conditioning, and electrical systems necessary to the operation of the buildings. Mt. SAC will maintain compliance with all fire, building and electrical codes and regulations, including regulations governing fire alarms, smoke detectors, fire extinguishers, fire suppression and sprinkler systems, water pressure

5.9 Utilities. Barnes & Noble College is not responsible for installation or payment of utilities, which are provided by the College District. For purposes of this Agreement internet services are not considered utilities and their installation and cost are governed by Article 5.5 above.

5.10 Inventories of Merchandise. Barnes & Noble College and Auxiliary shall inventory Auxiliary's inventory of New and Used Textbooks, Trade, Paperbacks, Technical, and Reference Books, School Supplies and General Merchandise, Giftware, and shall agree on a dollar value. Inventory values will be based on the terms stated in Section 5.14 of the RFP document.

5.11 Payment for Inventory. Barnes & Noble College will pay Mt. SAC for all inventory in two equal payments: Fifty percent (50%) within thirty (30) days after the completion of a physical inventory, and fifty percent (50%) within sixty (60) days after the completion of that inventory.

5.12 Security & Security Systems. Barnes & Noble College shall cooperate with Mt. SAC Police/Campus Safety and other Mt. SAC officials in the provision of security for the Bookstore. Barnes & Noble College shall be responsible for maintaining intrusion alarms and other security systems deemed necessary for the space and used by the Bookstore operation, including video surveillance systems. The Mt. SAC Police/Campus Safety Department shall be given access to the premises in order to respond to any alarms, and to make assessments.

The Los Angeles County Sheriff's Department – Walnut Sheriff's Station has sole responsibility for law enforcement response and investigations of criminal activity on Mt. SAC's property. Barnes & Noble College is responsible for enforcement of all criminal activity that occurs in the Bookstore. Barnes & Noble College will work with Mt. SAC and the Los Angeles County Sheriff's Department regarding all customer related criminal activity.

5.13 Evacuation Plan. Barnes & Noble College will follow the College's existing Evacuation Plan.

5.14. ATM Machines. ATM machines operated by the Auxiliary are currently located on the Premises in various locations. Auxiliary reserves the right to maintain the existing ATMs and install and operate additional ATMs in the future. Barnes & Noble College has no claim to any revenue from the ATM machines. The ATM machines are not to be considered part of the Bookstore Service Equipment.

ARTICLE VI
BOOKSTORE SERVICES PROGRAM

6.1 Locations. Barnes & Noble College shall operate the Bookstore in the existing Mt. SAC Bookstore located in Building 9A on a 12-month basis, based on Mt. SAC's academic calendar, see Exhibit "D". Mt. SAC reserves the right, upon consultation and agreement with Barnes & Noble College, to establish or change the service hours, plans, or other methods of operation of the Bookstore.

6.2 Services. Barnes & Noble College shall provide the services and products set forth in their Work Plan, which is attached hereto as Exhibit "E" and incorporated herein by this reference ("Work Plan"). Where Barnes & Noble College's Work Plan consists of a proposal or quote submitted in response to the RFP, the Work Plan shall be considered to include the Proposal, a copy of which is attached hereto as Exhibit "G" and incorporated herein by this reference. The Parties agree that the terms of the Agreement and Work Plan shall be controlling over any of the terms contained within the RFP. The Auxiliary shall have input on the pricing policies and offerings and reserves the right to approve any changes in the pricing policies or offerings.

6.3 Hours of Operation. Barnes & Noble College shall provide hours of operations currently in effect unless agreed to in writing by the Mt. SAC Auxiliary Services and/or until an amendment is made to the Agreement. (Hours are subject to change based on the academic calendar and/or Campus needs and shall be established by the Auxiliary and College District). The current hours are set forth in Exhibit "F" attached hereto and incorporated by this reference. The hours of service shall be posted in a mutually agreed upon place.

6.4 Participation in College Community. Barnes & Noble College agrees to participate in the College community by attending regular meetings with District staff and students, future planning meetings, and by being responsive to suggestions, concerns, and the changing needs of students and staff.

6.5 Textbook, Reference & Trade Book Offerings:

- A. Barnes & Noble College shall provide exclusive retail course materials including:
- 1) All required, recommended, and suggested textbooks and course materials – new, used, custom, in editions specified by the faculty or other designated departmental representatives.
 - 2) Digital, rental, and e-textbooks strategies.
 - 3) Art Kits, Ceramic Kits as required by Art instructors at a discounted rate for purchase by the Mt. SAC students.

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- 4) "Nursing Books in Box" at a mutually agreed upon discounted rate for all incoming Nursing students.
 - 5) Other educational materials and supplies used by the Mt. SAC students.
- B. Barnes & Noble College must carry any specific supplies as required by instructors or departments.
 - C. Barnes & Noble College must maintain a Children's Book inventory and selections for the campus community.
 - D. Barnes & Noble College shall carry all textbooks during the first eight weeks of a semester. Vendor may not begin returning books to publishers until after the eighth week.
 - E. In its provision of books, supplies, and materials, Barnes & Noble College will prepare a requisition (in a form acceptable to Mt. SAC), for each semester, that will be electronically distributed to faculty members with online ordering and tracking available. Mt. SAC will make reasonable efforts to see that Barnes & Noble College is given timely notice by faculty members or authorized designees of the books, supplies, and materials requested for all courses offered as follows:
 - 1) For the Spring semester, beginning in February, on or before November 1st;
 - 2) For the Summer sessions, on or before May 1st;
 - 3) For the Fall semester, beginning in August, on or before June 1st; and
 - 4) For the Winter sessions, on or before November 1st.
 - F. The Barnes & Noble College shall provide timely delivery of orders submitted by faculty members for books, supplies, and other materials for their respective courses, including items discovered to be unavailable, delayed in delivery, new editions, etc. Barnes & Noble College shall not be responsible for books or other items not being ready for sale to students due to failure of faculty members to submit timely order requests. However, Barnes & Noble College shall make every reasonable effort to supply items requested even when requests are not timely.
 - G. Barnes & Noble College shall make every possible effort to increase existing rental and used book sales by retaining used books purchased at Mt. SAC, if required for the following semester, and by purchasing or acquiring used books from other Barnes & Noble College bookstores and/or companies if necessary, and by providing online ordering and pickup service to students.
 - H. Barnes & Noble College shall provide for the sale of textbooks and other educational materials required for off-campus courses, if requested by Mt.

SAC. Barnes & Noble College will participate in the delivery of materials for Mt. SAC's Dual Enrollment program.

- I. Barnes & Noble College shall maintain a high quality reference inventory that is current, relative, and supportive of the curriculum and interests of the faculty, students, and staff of Mt. SAC. Barnes & Noble College must be responsive to advice relative to stocking of reference books suggested by Mt. SAC faculty members and/or researchers.
- J. Barnes & Noble College must provide a selection of current trade, academic, and technical literature in support of required material for the academic disciplines of Mt. SAC.
- K. Barnes & Noble College shall promote book signings and other academic and scholarly events as appropriate.
- L. The College Printing Services Department currently prints Instructor provided course pack materials, which are then provided to the Book Store at cost. Traditional bookstore markup is approximately 30% for sale to the students. The attached chart represents Printing Service's current cost of a 100 page course pack with a color cover page, packaged and ready to deliver to the student.

Total # of pages = 101. (100) black/white & (1) color

100 @.03 per page (includes labor, paper, toner, and click charge)	3.00
Drill @ .03 per item:	0.03
Index Covers @ .12 per item:	0.12
Shrink Wrap @ .25 per item	0.25
Color Printing @ .10 per side:	0.10
Tape Binding @ .75 per item:	0.75
Total cost per unit	4.25

In some cases, royalties are paid to the instructor based on the number of course packs that have actually sold. These royalties are paid by Mt. SAC after Finals week of the current semester. It is expected that Barnes & Noble College will continue this arrangement. Mt. SAC will credit Barnes & Noble College for all unsold course packs.

6.6 Textbook Rental Program. Barnes & Noble College shall continue and expand Mt. SAC's existing Textbook Rental Program or provide an equivalent or improved textbook rental/loan program. Barnes & Noble College shall offer at least as many rental titles that are currently provided for at the time of transition, or replace with a comparable program with similar savings to the students of Mt. SAC. Existing Inventory in this Textbook Rental Program category must be purchased at the last invoice cost for which the Bookstore paid if the titles are adopted for an upcoming term.

6.7. Marketing and Promotions. Barnes & Noble College shall provide special promotions frequently throughout each year of the contract, and will be expected to support New Student Orientation and other on-campus programs. Barnes & Noble College shall offer creative monthly promotions on general merchandise and clothing.

6.8 Website and Online Sales. Barnes & Noble College shall develop a professional website, which allows for online purchases. The website must allow students the option of purchasing or renting textbooks online, for pick-up in the Bookstore or for direct shipment to the student, with the Bookstore receiving credit for the sale. The website should also be used as a means to market Mt. SAC merchandise and products to students, alumni, parents, prospective students, athletics, and others.

6.9 Merchandising.

- A. Barnes & Noble College shall offer a selection of school and office supplies, memorabilia, spirit items, computer supplies and software, technical supplies, as well as “soft goods” such as clothing items, hats, scarves, etc., and other quality items under pricing policies that are both fair and competitive for like or similar quality as compared to other brick & mortar bookstores and retail establishments in the surrounding area.
- B. Barnes & Noble College must offer a significant depth of emblematic clothing designs and styles as agreed upon. The College and Barnes & Noble College may mutually agree on the acceptable number of styles and designs that would meet the needs of the campus community.
- C. Barnes & Noble College must also carry non-emblematic giftware, both every day and holiday specific that is attractive and suitable for the campus.
- D. Barnes & Noble College shall provide merchandise donations, and/or gift baskets for various functions that are approved by both the Vice President, Administrative Services and Barnes & Noble College.
- E. Barnes & Noble College shall carry an existing level of candies and salty snacks. Any new items should be vetted and approved through the College and/or the College’s food service provider, Sodexo.
- F. The Mt. SAC Auxiliary Services reserves the right during the term of the agreement t to require Barnes & Noble College to purchase and serve specific brand soft drinks.
- G. Barnes & Noble College shall have exclusive rights to operate the full service Bookstore located at Mt. SAC, offering all goods and services normally found in university or college bookstores and any such additional services as may be required by Mt. SAC (such as student photo IDs, issuance of student Transit Access Pass (TAP), sale of bus passes, and sales of discounted theme park and

movie tickets) during the term of the contract. Any service fees will be approved by Mt. SAC. Mt. SAC shall grant Barnes & Noble College the right to sell Mt. SAC licensed products.

- H. Mt. SAC reserves the right to recommend merchandise to be sold in the Bookstore and to request the removal of merchandise for sale in the Bookstore which Mt. SAC considers offensive or inappropriate.
- I. Barnes & Noble College shall provide special order service and other such sale services, such as class ring, cap and gown, commencement announcements, as are requested by Mt. SAC.
- J. Barnes & Noble College shall attend Commencement and offer for sale a variety of grad and alumni gift options. Barnes & Noble College will continue to create and provide Grad Packages for students to purchase that contain a variety of merchandise celebrating their achievements. (Mt. SAC will provide a sample of grad packages currently being offered.)
- K. Barnes & Noble College shall attend all football home games and offer a selection of merchandise.

6.10 Bookstore Policies.

- A. Pricing Policies. The Vendor shall operate according to the following pricing and bookstore policies as listed in Exhibit E.
- B. Mt. SAC may request and shall receive from the Barnes & Noble College proof that the pricing policies in Exhibit E are being followed. Information shall be provided by Barnes & Noble College at the earliest possible time following its receipt of Mt. SAC's request.
- C. In exceptional cases only involving changes in university and college bookstore market conditions that are outside of Barnes & Noble College's control, Barnes & Noble College may request a mutual review and decision with respect to pricing policies at any time during the year. Mt. SAC and Barnes & Noble College shall determine the effective date of any such changes in policies.
- D. Barnes & Noble College shall provide for charge, sales of books, supplies, and all other merchandise to students, faculty, and staff through Master Card, Visa, American Express, P-Card, or a Mt. SAC Purchase Order. Barnes & Noble College shall also provide for charge, sales to Mt. SAC Departments where appropriate. Barnes & Noble College shall accept personal checks from students, faculty, and staff in a reasonable amount in payment for purchases, subject to appropriate identification.

Barnes & Noble College must be Payment Card Industry Compliant.

- E. Barnes & Noble College shall post, in conspicuous places, bookstore policies concerning refunds, buybacks, exchanges, rentals and discounts. Barnes & Noble College shall provide a refund policy that is developed with student's welfare in mind to encourage repeat business.
- F. Barnes & Noble College shall purchase used books from the students, faculty and others at Mt. SAC based on a schedule that is practical and convenient to both the Bookstore and the Mt. SAC community according to the following policy:
 - 1) If Barnes & Noble College has a faculty order indicating that a book will be a course adoption for a following semester, it will pay no less than fifty percent (50%) of the purchase price. A lesser amount may be paid only if copies required for faculty orders are filled or if a book is in unusually poor condition.
 - 2) If Barnes & Noble College does not have information as to the future use of a book or if the book will not be used a following semester, or will soon be replaced by a revision announced by the publisher, Barnes & Noble College shall pay the price listed for the book in a textbook guide which Mt. SAC and Barnes & Noble College agree to use for this purpose.
- G. Barnes & Noble College shall operate the Bookstore on a schedule that accommodates the academic calendar of the Mt. SAC community. At a minimum, operating hours are to be from **Monday-Thursday 7:45am-6pm and Friday 7:45am-4pm**. Other operating hours may be requested by Mt. SAC to accommodate the start of an academic semester or special events, and under such circumstances, Barnes & Noble College should make every effort to operate the Bookstore during such hours. Changes in the operating hours described above shall be approved by Mt. SAC.
- H. The Vendor shall provide the benefit of a minimum 15% discount to faculty and staff on all purchase for personal use except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages. A minimum discount of 20% percent will be offered on all authorized departmental purchases except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
- I. The Vendor shall prosecute individuals for acts of property damage, theft of merchandise or money, or fraudulent acts as Mt. SAC should reasonably request, and if Mt. SAC should so request, shall cooperate with the College in

the College's prosecution of such individuals. The Vendor shall notify the Mt. SAC Police/Public Safety Department when any such incidents occur.

6.11 Self Improvement and Evaluation.

- A. Evaluation. Barnes & Noble College shall conduct specific and continuing programs of inquiry and evaluation through Campus meetings and "how are we doing?" comment cards to determine the level of satisfaction of the students and the College District community with the Bookstore operations. The results of this inquiry and evaluation process shall be shared with the College Bookstore Commission and the College's Administrative Services Department on a regular basis.
- B. Bookstore Commission/Barnes & Noble College Meetings. The College Bookstore Commission may request to meet with Barnes & Noble College on a semester/intersession basis, or as needed, throughout the term of the Agreement. Thereafter, the Bookstore Commission may meet as required or needed to evaluate all Bookstore services, focusing on comments and providing information that could result in needed changes or improvements. The Bookstore Commission may conduct bookstore preference surveys, assist in planning special events, and in general, act as a representative body for the College to communicate reaction to the bookstore services

6.12 Intoxicating Beverages. No intoxicating beverages shall be kept, sold or served upon the Premises.

6.13 Safety. Barnes & Noble College shall comply with all applicable laws, ordinances, rules and regulations of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Barnes & Noble College shall erect and maintain, as required by existing and future conditions of the scope of work or service, all necessary safeguards for safety and protection, including posting danger signs and other warning against hazards and promulgating safety regulations. Barnes & Noble College shall comply with all Occupational Safety and Health Administration (OSHA) standards as they apply to Barnes & Noble College's scope of work and service.

ARTICLE VII
FINANCIAL ARRANGEMENTS

7.1 Commissions. Barnes & Noble College shall pay Auxiliary a commission as follows:

Guaranteed Amount/Calculated Commission

On an annualized basis, Barnes & Noble College will pay Mt. San Antonio College the greater of the following:

Guaranteed Amount

Contract Year 1 (January 1, 2018 – December 31, 2018): \$600,000

Barnes & Noble College will provide a Guaranteed Amount in all future years of this agreement that will be equal to 90% of the Calculated Sales Commission of the immediate preceding year.

or

Calculated Commission

11.5% of all gross sales up to \$4,500,000

13.0% of all gross sales over \$4,500,000

For the first contract year, Barnes & Noble College shall pay Mt. San Antonio College 1/12 of the annual guarantee on a monthly basis and shall be paid within thirty (30) days after the close of the month in which they were earned. Commencing with the second contract year, the applicable Commission as set forth above hereof shall be made monthly by Barnes & Noble College to Mt. San Antonio College and shall be paid within thirty (30) days after the close of the month in which they were earned. The final payment for any year shall be made within thirty (30) days after the end of the applicable contract year and will include any adjustments required by the calculation set forth above.

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

Mt. San Antonio College has represented to Barnes & Noble College that sales for the years ended FY 2015-2016 were \$4,416,171, net of all refunds, voids, sales tax, low or no margin sales, and discounts provided to customers, as provided by Mt. San Antonio College. This figure includes sales in all locations for which Barnes & Noble College will assume operations. Since the Barnes & Noble College financial offer is based on this figure and maintaining the existing business and programs, Barnes & Noble College would expect to renegotiate its

financial offer if the reported sales are found to be in error or materially inaccurate or if they are negatively impacted by a change in Mt. San Antonio College's policy.

Capital Investment for Renovations & Computer Systems

Barnes & Noble College will commit up to \$50,000 to support renovations of the current SAC Book RAC and up to \$100,000 for point of sale and computer systems.

Barnes & Noble College will depreciate this investment on a straight-line basis over the 5 year period of this Agreement. Should Mt. San Antonio College cancel this Agreement before the end of that period, then Mt. San Antonio College shall reimburse Barnes & Noble College for any amount of the investment not yet depreciated.

Scholarships

Barnes & Noble College will provide \$5,000 for annual textbook scholarships to be awarded at the discretion of Mt. SAC.

7.2 Financial Requirements and Administration.

Barnes & Noble College shall have complete responsibility for the financial administration of the bookstore facility. Such responsibilities include, but are not limited to, ordering books and merchandise, billings and collections from third parties, processing payments for all goods, acceptance and deposit of all funds, reconciliation of accounts, preparation of annual financial reports and all other such activities that may apply.

7.3 Licenses, Permits, and Taxes.

- A. Barnes & Noble College shall secure and pay for all federal, state, and local licenses and permits required for the Mt. SAC Bookstore operations provided for herein. Mt. SAC will cooperate with Barnes & Noble College in obtaining all licenses and permits and will execute such documents as shall be reasonably necessary or appropriate for such purposes. Barnes & Noble College shall pay for any and all taxes and assessments attributable to the operation of the Mt. SAC Bookstore provided herein including sales taxes, payroll taxes, and federal, state, and local income taxes.
- B. Barnes & Noble College will be granted the right to use Mt. SAC's name, logo and seal for reproducing and imprinting stationary, soft goods, notebooks, pens, pencils, jewelry and similar items acceptable to Mt. SAC, provided that Mt. SAC's name is not used for product endorsement.

- C. Applicable payments as set in Barnes & Noble College's proposal shall be made monthly by Barnes & Noble College to Mt. SAC and shall be paid within 30 days after the close of the Month in which they were earned. The final payment for any year shall be made within thirty (30) days after the end of the applicable contract year, and will include any adjustments required by the percentage of gross sales formula set forth in Barnes & Noble College's proposal.
- D. Each payment shall be accompanied by a detailed statement of its computation and Barnes & Noble College shall furnish supporting documentation to Mt. SAC.
- E. Mt. SAC shall have full access at all times to the Bookstore accounting records, including all cash registers at the Bookstore being used by Barnes & Noble College, with or without notice. Cash register control totals will be used to verify the cash sales reported. All cash registers or POS equipment utilized by Barnes & Noble College in the Mt. SAC Bookstore shall have non-changeable grand totals.
- F. Barnes & Noble College shall maintain complete and accurate accounts and records, in accordance with nationally accepted bookstore industry standards of all revenues, cost of goods, salaries and benefits, and all other expenses in connection with the Mt. SAC Bookstore operation provided under the terms of the Contract. All such accounts and records shall be retained by the operation and may be inspected and audited by Mt. SAC.

7.5 Audit. The Auxiliary reserves the right of authorized Administrative Services personnel, or authorized representatives thereof, to conduct unannounced audits of financial reporting practices of Barnes & Noble College.

ARTICLE VIII

GENERAL TERMS AND CONDITIONS

8.1 Taxes. Barnes & Noble College shall bill and collect sales and use taxes, if applicable, on all sales and services rendered on or from the Premises. Barnes & Noble College assumes complete liability for all taxes applicable to the operations, income and transactions of Barnes & Noble College. The Auxiliary or College District shall not be liable and will not make reimbursement to Barnes & Noble College for any tax imposed either directly or indirectly upon Barnes & Noble College by any authority by reason of the Agreement or otherwise.

8.2 Compliance with Law. Barnes & Noble College and Auxiliary shall comply with all laws, ordinances, and regulations of any applicable federal, state, county, or city government, bureau, or department applicable to the performance of the services described herein, including, but not limited to, the Family Educational Rights and Privacy Act ("FERPA"). Mt. SAC,

Auxiliary, and Barnes & Noble College each agree to provide all cooperation reasonably necessary for such compliance. In addition, Barnes & Noble College shall also comply with all Mt. SAC policies and regulations as may currently and/or in the future pertain to service under the Contract. These laws, ordinances, regulations, and policies shall apply to the Agreement throughout.

8.3 Bond. Prior to execution of this Agreement, Barnes & Noble College shall provide a Performance Bond in the amount of Fifty Thousand Dollars (\$50,000.00) from a California admitted surety acceptable to the Auxiliary.

8.4 Liquidated Damages.

- A. The Bookstore shall be implemented and fully operational as of January 29, 2018. If the Bookstore is not fully operational by this time, it is understood that the Mt. SAC Auxiliary Services will suffer damage. It is agreed that Barnes & Noble College shall pay to the Mt. SAC Auxiliary Services as fixed and liquidated damages, and not as a penalty, the sum of one-thousand dollars (\$1,000) per day for each calendar day of delay until the Bookstore is fully operational as specified herein. Barnes & Noble College and his surety shall be liable for the amount thereof.
- B. Barnes & Noble College shall not be charged liquidated damages because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Barnes & Noble College including, but not restricted to: acts of God or of public enemy; acts of Government; acts of Mt. SAC or anyone employed by Mt. SAC, or acts of another Contractor in performance of a contract with Mt. SAC; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or, unusually severe weather. Barnes & Noble College shall within three (3) days of the beginning of any such delay (unless the Mt. SAC Auxiliary Services grants a further period of time prior to date of final settlement of the contract) notify the Mt. SAC Auxiliary Services in writing of causes of delay; thereupon the Mt. SAC Auxiliary Services shall ascertain the facts and extent of delay and grant extension of time for implementation of bookstore services when in its judgment, the findings of fact justify such an extension. In case of a continuing cause of delay, only one claim is necessary.

8.5 Promotion. In no instance will the Mt. SAC Auxiliary Services be used by Barnes & Noble College in connection with any advertising or promotion to non-members of the campus community without the specific written permission of the Mt. SAC Auxiliary Services.

8.6 Catastrophe. If, because of riots, war, public emergency or calamity, fire, earthquake, Act of God, terrorism, government restriction, labor disturbance or strike, business operations at the Campus shall be interrupted or stopped, performance of this Agreement, with the exception of monies already due and owing, shall be suspended and excused to the extent commensurate with such interfering occurrence; and the expiration date of this Agreement, may by mutual agreement of both Parties be extended for a period of time equal to the time that such

default in performance is excused. Neither Barnes & Noble College nor Auxiliary shall have any recourse against the other party for expenses incurred due to the catastrophe unless otherwise made the responsibility of a party pursuant to this Agreement. Additionally, Barnes & Noble College shall provide to the Auxiliary and College District any or all available food, beverages, equipment, or supplies necessary for survival of Campus occupants in case of an emergency.

8.7 Insurance. During the term of the contract, Barnes & Noble College and all subcontractors shall maintain, at their sole expense, minimum insurance coverage as follows:

- A. Comprehensive General Liability Insurance including coverage for Premises/Operations, Products/Completed Operations, Independent Contractors, Contractual and Personal Liability at a combined single limit of \$2,000,000 per Bodily Injury and Property Damage, and;
- B. Comprehensive Automobile Liability Insurance covering owned, hired and non-owned vehicles at a combined single limit of \$2,000,000 per Bodily Injury and Property Damage.
- C. Combination Policy. In lieu of A and B above, the Barnes & Noble College at its option may carry a combination policy including Comprehensive General Liability and Comprehensive Automobile Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence on Bodily Injury and Property Damage.
- D. Workers' Compensation and Employer Liability Insurance providing full statutory coverage per the State of California rules and regulations.
- E. Property Insurance. The College District shall maintain, or cause to be maintained, a system of coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep the buildings, including the Premises, and all property contained therein insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance.
- F. Insurance Policies. Barnes & Noble College's insurance is to be placed with insurers admitted by the State of California with an "A" rating, Class VIII, or better rating from A. M. Best. Barnes & Noble College's insurance carrier must be approved by the Auxiliary. Proof of insurance shall be delivered to the Vice President, Administrative Services prior to the Effective Date.
 - 1) Certificates and insurance policies shall include the following clause:
"This policy shall not be canceled or reduced in required limits of liability or an amount of insurance until notice has been mailed to the Auxiliary. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
 - 2) Certificates of insurance shall state in particular those insured, extent of

insurance, location and operation to which insurance applies (i.e. the Bookstore), expiration date, and cancellation and reduction notice.

- 3) Certificates of insurance shall clearly state that the Auxiliary, the College District and their board members, officers, agents, employees and servants are named as an additional insured under the policy described and that such insurance afforded thereby to the Auxiliary, College District, their officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the Auxiliary, College District, or their officers and employees have other insurance or self-insurance against a loss covered by such a policy, such other insurance shall be excess insurance only. Barnes & Noble College shall provide the Auxiliary with the endorsement to the policy that names the Auxiliary and the College District as additional insured.

8.8 Indemnification. Barnes & Noble College shall defend, indemnify, and hold harmless the Mt. SAC Auxiliary Services, its officers, agents, employees, and volunteers from all loss, cost, claim, demand, lawsuit, proceeding, action, settlement, damage, liability, obligation, judgement, fine, penalty, and expense, including but not limited to reasonable attorney's fees (collectively, "Losses") arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of Barnes & Noble College, or those of any of its officers, agents, employees, or subcontractors, whether such act is authorized by the Agreement or not; and Barnes & Noble College shall pay for any and all damage to the Mt. SAC Auxiliary Services' property, or loss or theft of such property, done or caused by such persons. Barnes & Noble College further agrees to waive all rights of subrogation against the Mt. SAC Auxiliary Services. The Mt. SAC Auxiliary Services assumes no responsibility whatsoever for any Barnes & Noble College's property placed on the premises. The provisions of this section do not apply to any damage or losses caused solely by the negligence of the Mt. SAC Auxiliary Services or any of its officers, agents, employees, or volunteers.

Mt. SAC Auxiliary Services shall defend, indemnify, and hold harmless Barnes & Noble College, its officers, agents, employees, and volunteers from all losses arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of Mt SAC, or those of any of its officers, agents, employees, or subcontractors (including but not limited with respect to any hazardous materials in the premises or Bookstore building as stated in Section 5.1., whether such act is authorized by the Contract or not; and Mt. SAC shall pay for any and all damage to Barnes & Noble College's property, or loss or theft of such property, done or caused by such persons. Mt. SAC further agrees to waive all rights of subrogation against Barnes & Noble College. Barnes & Noble College assumes no responsibility whatsoever for any Mt. SAC's property placed on the premises. The provisions of this section do not apply to any damage or losses caused solely by the negligence of Barnes & Noble College or any of its officers, agents, employees, or volunteers.

- A. Actions Filed. Barnes & Noble College and Auxiliary shall defend any action or actions filed in connection with any of said Losses, for which liability has been assumed pursuant to this Agreement, and will pay all costs and expenses, including attorneys' fees and costs incurred by the other party in connection therewith.
- B. Judgments Rendered. Barnes & Noble College and Auxiliary shall promptly pay any judgment rendered against the other party covering such Losses arising out of or in connection with such use of and operations on the Campus referred to herein and agrees to save and hold the other party harmless there from.
- C. Costs and Expenses; Attorneys' Fees. In the event either party is made a party to any action or proceeding filed or prosecuted against the other party for such Losses arising out of the use of and operations on the Campus referred to herein, in accordance, the other party agrees to pay the party any and all costs and expenses incurred by them in such action or proceeding together with reasonable attorneys' and expert witness fees.
- D. Employment Litigation. Without in any way limiting or modifying Auxiliary's obligations in this Section 8.8, Auxiliary additionally agrees to indemnify, defend, and hold harmless Barnes & Noble College and its officers, agents, employees, and volunteers from all Losses related to any litigation involving current bookstore employees, including any appeals related thereto and including but not limited to Auxiliary's requirement, as stated in Section 4.7 hereof, that Barnes & Noble College hire and provide a five (5) year employment guarantee for such employees. The provisions of this Section 8.8 shall survive any termination of this Agreement.

8.9 Assignment. Neither party shall assign or transfer, by operation of law, nor otherwise, any or all of the rights, burdens, duties, or obligations with regard to the Contract, without prior written consent of the Mt. SAC Auxiliary Services.

8.10 Legal Entity Change. Should a change be contemplated in the name or nature of Barnes & Noble College's legal entity, Barnes & Noble College shall notify the Mt. SAC Auxiliary Services in order that proper steps may be taken to have the change reflected in the contract documents.

8.11 Attorneys' Fees. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Agreement, each Party shall bear its own attorneys' fees, court costs and related expenses.

8.12 Notices. Any notice or communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other Party as follows:

To Auxiliary: Mt. San Antonio College
Attention: Michael Gregoryk
Vice President, Administrative Services
1100 North Grand Avenue
Walnut, California 91789

To: Barnes & Noble College
Attention: Janine von Juergensonn
National Vice President, Marketing
120 Mountain View Ave
Basking Ridge, NJ 07920

With a courtesy copy to:

Barnes & Noble College
Attention: Legal Department
120 Mountain View Ave
Basking Ridge, NJ 07920

and/or to such other persons or places as either of the Parties may hereafter designate in writing. All such notices shall be effective when received.

8.13 Construction and Effect. A waiver of any failure to perform under this Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any exhibits referred to herein are made a part of this Agreement by reference, provided that in the event of a conflict between the terms of such exhibit or any other document incorporated herein, and the terms of this Agreement, the terms of the Agreement shall govern.

8.14 Entire Agreement; Amendments to Agreement. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. All provisions of this Agreement hereto shall remain in effect throughout the term thereof unless the Parties agree, in a written document signed by both Parties, to amend, add or delete any provision. This Agreement may not be changed other than by an agreement in writing signed by the Parties hereto. Email correspondence shall not qualify as a written document signed by an authorized signatory.

8.15 Regulations and Access. Auxiliary shall provide Barnes & Noble College with reasonable access to, and use of, the Premises to permit Barnes & Noble College to perform its obligations under this Agreement, it being understood by the Parties that Auxiliary does not grant to Barnes & Noble College the exclusive use of the Premises. Auxiliary may make reasonable regulations for the use and occupancy of the Premises and shall give Barnes & Noble College

written notice thereof. Auxiliary shall have the right upon prior written notice to Barnes & Noble College, reasonable under the circumstances, to relocate all or a portion of the Premises or to withdraw a portion of the Premises. If Mt. SAC materially reduces the footprint of the Bookstore, Barnes & Noble College and Mt. SAC agree to renegotiate the terms and conditions of this agreement.

8.16 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California and the venue for disputes regarding the Agreement shall be Los Angeles County, California.

8.17. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

8.18. Waiver. Except as otherwise provided by this Agreement, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound thereby. A waiver of any breach or any of the covenants, terms or provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other covenant, term or provision. When there is a conflict between Barnes & Noble College bid proposal terms and conditions and the District's, the District's shall supersede.

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

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

party, waive compliance with the provisions of this Agreement. The terms of this section shall survive the expiration or termination of this Agreement.

8.20 Independent Parties. The relationship established under this Agreement between Mt. San Antonio College and Barnes & Noble College is that of independent third parties. This Agreement shall not be construed to create a partnership, joint venture, agency, or other association between the parties or their respective employees. Unless otherwise provided in this Agreement, neither party nor its employees, agents, or subcontractors has any authority to bind or act on behalf of the other party.

8.21 Marks. The names, trademarks, and logos of each party are the exclusive property of such party, and each party reserves all rights in and to its own marks. Each party shall use the marks of the other party only in connection with its performance under this Agreement, provided, however, Barnes & Noble College may use Mt. San Antonio College's name in any of its required public filings.

8.22 Authority. Each party represents and warrants (a) it has all right, power, and authority to enter into this Agreement and to fully perform its obligations hereunder and (b) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.

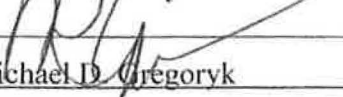
8.23 Signatures and Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but which together will constitute one and the same agreement. Counterparts and signed copies may be transmitted via electronic means and shall constitute originals for all purposes.

[SIGNATURES ON FOLLOWING PAGE]

Agreement - Bookstore Management Services

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first signed or the first day of the Initial Term, whichever is sooner.

MT. SAN ANTONIO AUXILIARY
SERVICES CORPORATION

By: 
Name (printed): Michael D. Gregoryk
Title: Vice President, Administrative Services

BARNES & NOBLE COLLEGE

By: 
Name (printed): Janine von Juergensonn
Title: National Vice President, Marketing

