TO: Board of Trustees

FROM: Douglas Treadway

DATE: July 13, 2005

SUBJECT: Award of Contract for Food Services

The current contract with Fresh and Natural, Inc. for the management of food services on the Fremont campus is scheduled to end on July 30, 2005. The District began advertising a Request for Proposals (RFP) for these services in May. Several prospective service providers were also notified by fax and/or email. Three vendors requested the RFP, however the current provider, Fresh and Natural, was the only vendor to submit a proposal.

Fresh and Natural has provided the current food service on the Fremont campus for the past five years. They have been responsive, have provided a steady commission and overall the campus seems to be pleased with their services.

Their proposal offers a 7% commission on the gross sales, less sales tax, an annual donation of two $500.00 scholarships to Ohlone Students and an annual donation of $1,000.00 of food products and/or catering services for public related events.

The term of this contract is three years with two one-year renewal options.

RECOMMENDATION:
The President/Superintendent recommends that the Board of Trustees award the contract for the management of food services on the Fremont campus to Fresh and Natural, Inc. with a 7% commission based on gross sales, less sales tax; two annual scholarships for $500 and an annual donation of food products/catering services for $1,000.

Attachments: Fresh & Natural Contract #206-0605
THIS AGREEMENT, made and entered into this July 13, 2005 in the State of California, by and between Ohlone Community College District, through its duly elected and appointed, qualified and acting Board.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the District hereinafter expressed, does hereby agrees to furnish to the District services and materials, as follows:

Contractor to provide all services, including all labor, supplies, equipment, and transportation necessary for the Operation of the Ohlone College Food Services described herein for the campus of Ohlone College, premises at 43600 Mission Blvd., Fremont, California in accordance with the Exhibit A-General Conditions, Exhibit B-RFP #206-0605 and Exhibit C-Proposal documents, which are by this reference made a part of this agreement.

Food Service operations as stated in the Request for Proposals shall be fully operational by the fixed commencement date of August 15, 2005.

The Contractor shall pay the District a commission for all services described at a fixed commission percentage of Seven Percent (7%) of Gross Sales less Sales Tax. Payment, including commission reports shall be made on or before the fifteenth day of each month. The commission statement shall indicate Gross sales, sales tax, adjusted gross sales and the commission for each service the Contractor provided on campus (ie. Cafeteria/food service, coffee cart service and catering service) during the month immediately preceding the date of the commission check. In addition to the commission, for each year of the contract and contract renewals, Contractor shall provide two (2) Five Hundred Dollar ($500.00) Scholarships to Ohlone College Students and One Thousand Dollars ($1,000.00) in food products and/or catering for public related service events as described in RFP 206-0605. Payments and commission reports shall be delivered to Ms. Debbie Tucker, Director, Campus Activities and Extended Opportunity Programs and Services. Ohlone College, 43600 Mission Blvd., Fremont, CA. 94539.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

DISTRICT: OHLONE COMMUNITY COLLEGE DISTRICT

CONTRACTOR: FRESH & NATURAL, INC.

<table>
<thead>
<tr>
<th>TITLE OF OFFICER ACTING FOR DISTRICT</th>
<th>DISTRICT hereafter called the District, and</th>
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<tr>
<td>Director of Purchasing, Contract Administration and Auxiliary Services</td>
<td>OHLONE COMMUNITY COLLEGE DISTRICT</td>
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<tr>
<td>CONTRACTOR hereafter called the Contractor.</td>
<td>CONTRACT NUMBER</td>
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<td>Fresh &amp; Natural, Inc.</td>
<td>206-0605-001</td>
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<td>CONTRACTOR’S LICENSE</td>
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<tr>
<th>Address</th>
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<tr>
<td>426 S. Main Street</td>
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<td>Milpitas, CA  95035</td>
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General Conditions

1. Definition Of Terms
   a) District: Ohlone Community College District
   b) "Contractor, Vendor or Bidder": A person, firm, or corporation to whom a contract is awarded, or may be awarded, by the College.
   c) “RFP, Bid, Request for Proposal": This entire document, including any modifications or amendments, which may be made by agreement of the College and the Contractor.
   d) "Contract": The agreement entered into by the College and the Contractor to perform the requirements of this RFP, which will be made a part of the contract as amended by agreement of the College and the Contractor.

2. The Contractor, and the agents and employees of Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of Ohlone Community College District.

3. Without the written consent of the District, this agreement is not assignable by Contractor either in whole or in part.

4. Time is of the essence in this agreement.

5. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

6. Contractor, by signing the contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor’s failure to comply with an order of a Federal Court which orders the Contractor to comply with an order of the National Labor Relations Board (Public Contract Code, Section 10296).

7. The contracting parties in any contract involving an expenditure of District funds in excess of $10,000 shall be subject to the examination and audit of the Auditor General for a period of three years after final payment under the contract (Government Code Section 10532).

8. The Contractor’s signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9. Insurance requirements:
   a) During the term of the contract, the Contractor shall maintain, at his sole expense, minimum insurance coverage as follows:

      1) 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;
      2) 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.
      3) In lieu of a and b above, the Contractor at his 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.
      4) Workers' Compensation and Employer Liability Insurance providing full statutory coverage.
   b) The Contractor's insurance carrier must be approved by the District and carry an "A" rating.
   c) Proof of Insurance: Proof of insurance shall be delivered to the Director of Purchasing and Contracts Administration prior to the contract beginning date.

      1) Certificates and insurance policies shall include the following clause: "This policy shall not be canceled, modified or reduced in required limits of liability or an amount of insurance until notice has been mailed to the District. Date of cancellation, modification or reduction may not be less than thirty (30) days after date of mailing notice." Certificates of the above policies shall be furnished to the College, together with copies of receipts for all premium payments made thereon on a yearly basis for the term of the contract.
      2) Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.
3) Certificates of insurance shall clearly state that the District and its officers, agents, employees and servants are named as an additional insured under the policy described and that such insurance afforded thereby to the District, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the District, or its 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. Contractor shall provide District with the endorsement to the policy that names District as additional insured.

d) The District shall not be responsible to the Contractor for any theft or damage to materials, supplies, food or vending equipment by spoilage, theft, fire, flood or other causes.

10. Indemnification:

a) The Contractor agrees to indemnify, defend and save harmless Ohlone Community College District, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract and from any and all claims and losses accruing or resulting to any person, form or corporation who may be injured or damaged by the Contractor in the performance of this contract.

11. Taxes:

a) The Contractor assumes complete liability for all taxes applicable to the operations, income and transactions of the Contractor. The District shall not be liable and will not make reimbursement to the Contractor for any tax imposed either directly or indirectly upon the Contractor by any authority by reason of the contract or otherwise.

b) The Contractor recognizes and understands that the contract may create possessor interest subject to property taxation and that the Contractor may be subject to the payment of property tax levied on such interests.

12. Licenses:

a) It is expressly understood that the Contractor assumes sole responsibility for the observances of, and so observes and complies with, all provisions of federal, state, and local laws relating to or governing the operation of food service areas. All licenses and permits shall be obtained and paid for by the Contractor.

13. Financial Records

a) It is expressly understood, that the Contractor shall maintain financial records in accordance with standard accounting practices and procedures and shall make said financial records and supporting data and documents available for inspection, reproduction, and audit by the College at its request. Records, data, and documents shall be retained for five (5) years after the end of each contract year. Profit and loss statements will be required to be sent monthly to the College's chief financial officer.

14. Term Of Contract

a) The term of the contract shall run for a period of three (3) years commencing August 1, 2005.

1) August 1, 2005, and ending July 30, 2008. (Subject to provisions provided in Article 20, Termination). Unless terminated by either party, 90 days before expiration, it will be automatically renewed for two (2) additional one (1) year periods.

15. Prices

1) The cost of any products or services covered by any portion of this contract may be renegotiated provided the vendor provides 30 days written request for price changes and can prove to the satisfaction of the College that costs have changed by the percentage requested. If satisfactory negotiations cannot be consummated, there is nothing in this paragraph that will prohibit either the vendor or the College from terminating the contract.

16. Exclusive Franchise

1) The Contractor, during the period of this contract, shall be the only authorized continuous food service vendor on campus. By mutual agreement for special groups, another vendor may provide food service on campus. It is mutually agreed and understood that the College will give the Contractor first consideration; however, if prices, quality, and service are not competitive with other vendors, the College reserves the privilege and right to acquire other services.

17. Evaluation Of Service

a) The College may have a food committee to appraise and evaluate the operations of the Contractor. The college may formally survey students on such frequency as deemed necessary. Such survey may be in addition to other devices
used to monitor satisfaction, such as use records, consumption charts, and consumer board. Results of surveys and other devices shall be made available to designated College and Contractor personnel.

18. The College reserves the right to have designated representatives review, inspect, and evaluate the operation and condition of the food service facilities at any time with respect to the quantity and quality of food sold and served, the methods of service, the prices of a la carte selections, the hours of meal service, and generally with respect to the safety, sanitation, and maintenance at levels satisfactory to the College.

19. Health Regulations

a) The Contractor shall comply with all state and local health and sanitation regulations relating to personnel and maintenance of the kitchens, dining rooms, storage rooms, clothing, etc. Results of all health and sanitation inspections shall be forwarded to the Contracts Manager.

20. Termination:

a) In the event of termination of the contract, the new Contractor shall, if agreeable with the incumbent Contractor, purchase at prices no greater than originally paid by the Contractor, any food inventory which is of good, merchantable and usable quality.

b) In the event the Contractor fails to carry out or comply with any of the terms and conditions of the established contract, the College reserves the right to demand remedy of any failure/default within ten (10) calendar days.

1) In the event the Contractor fails to remedy the failure or default within the specified period, the College shall have the right to cancel and terminate the established contract. Termination by either party shall be in writing. In such case, it shall be incumbent upon the Contractor to continue operation until relieved by a subsequent food service operator chosen by the College (not to exceed ninety (90) calendar days).

c) In the event that the College shall fail to carry out or comply with any of the covenants or conditions of the contract or any amendments thereto, the Contractor may notify the College of such failure or default and demand that the same be remedied within ten (10) calendar days; and, in the event the College fails to remedy the same within said period, the Contractor shall thereupon have the right to cancel and terminate this agreement with a ninety (90) calendar day notice by giving its intention to do so, in writing to the Contracts Manager.

d) Items A through D above notwithstanding, in the event that the Contractor fails to maintain and keep in force general liability insurance and worker's compensation insurance, the College shall have the right to cancel and terminate this agreement forthwith and without notice. (Copies of all insurance policies are to be forwarded to the Contracts Manager.)

a) For Convenience: Either party may terminate this agreement with 90 days written notice prior to the end of the 3-year term or prior to either of the 2 additional years extensions.

21. Parking:

a) Parking on campus by the Contractor's employees shall be subject to the same parking regulations as generally apply to College employees.

22. Delay in Performance: The Contractor shall notify the College promptly of any material delay in performance of specified services and shall specify in writing to the District's Contracts Manager, the proposed revised performance date as soon as practicable after notice of delay. Contractor shall not be liable for delays in performance due to causes beyond its reasonable control, but it will be liable for delays due to its fault or negligence. In the event of any excusable delay, the date of performance shall be extended for a period equal to the time lost by reason of such delay on written approval of the District's Contracts Manager.

23. Liens: The Contractor shall at all times keep the College free and clear from all liens asserted by any person, firm, or corporation for any reason whatsoever, arising from the furnishing of services (whether for services, work or labor performed, or materials or equipment furnished) by Contractor pursuant to the terms of this RFP. If any such lien shall at any time be filed against the College's premises, and Contractor shall fail to cause such lien to be removed or discharged (by payment or bond or otherwise) within ten (10) days after being notified of the filing of such lien, the College may, but shall not be obligated to, discharge the same, and all costs and expenses (including attorney's fees) incurred by the College in discharging the lien shall be paid by the Contractor directly to the College.

24. Contract's use of facilities: Contractor and its employees or agents shall have the right to use only facilities of the College that are necessary to perform services under this RFP, and shall have no right of access to any other facilities of the College. Sidewalks, entrances, passages, elevators, stairways, and corridors shall not be obstructed by Contractor or used for any purpose other than ingress/egress to and from the College's premises under the Contractor's control. Delivery of merchandise to Contractor's service area shall be at Contractor's risk and expense. Contractor shall promptly unload and
store its shipments delivered to the College premises. All deliveries shall be made to the loading dock specified by the District during normal business hours.

25. **Accidents:** Contractor agrees that in the event of an accident involving personal injury, a full written report will be furnished to the Human Resources Department. Contractor shall perform the services called for in this RFP without interfering in any way with the activities of the College's faculty, students, staff or visitors.

26. **Loss of property:** The College shall have no responsibility for the loss, theft, mysterious disappearance, or damage to, equipment tools materials supplies, and other personal property of the Contractor or its employees, subcontractors or suppliers, which may be stored in the food service area.

27. **Standards of care:** The Contractor agrees to perform the services specified under this RFP with that standard of care, skill, and diligence normally provided by a professional organization in the performance of such services. Contractor shall permit inspection of its operations at any time by the College to determine that standards of quality and cleanliness are being met; provided, however, that all inspections shall be made in such manner as to not interfere with the conduct of Contractor's business operations.