

**Agendum
Oakland University
Board of Trustees Formal Session
September 11, 2023**

**APPROVAL OF CHANGES TO CONTRACT FOR RESIDENTIAL AND RETAIL FOOD
SERVICES ON CAMPUS
A Recommendation**

1. Division and Department: Student Affairs and Diversity

2. Introduction: Since July 2002, Compass Group North America-Chartwells Higher Education (Chartwells) has provided residential and retail campus food service. Concepts currently operated by Chartwells include: Pioneer Food Court (Oakland Center (OC)), the Market Oakland Center (OC), Bistro ft. Zingerman's Coffee (OC), Hillcrest Dining Center, Vandenberg Dining Center, Tilly's Convenience Store (Oak View), The Hive (Hillcrest), Frankie's Café (Kresge), Atrium Café (Human Health Building), Pawley Hall Convenience Store, and Healy Café (Elliott).

Oakland University and Chartwells have built a relationship based on trust, respect, and collaboration. Support to the University is provided at the local, regional and national levels, resulting in continuous improvements and innovations in service, offerings and facilities for Oakland University students, faculty and staff.

In response to increasing expenses and to remedy the current financial landscape and enrollment projections, Chartwells and Oakland University management are proposing to amend the current agreement and change the model from one in which Chartwells receives a stated Board rate per student on a meal plan and retail and catering sales as revenue sources to cover the expenses associated with the program which now include sales commissions to OU; to a cost reimbursement structure where OU will be responsible for all approved expenses associated with the program.

A six member committee reviewed the proposal and analyzed operational and financial aspects. Committee members included representatives from Finance and Administration, the Oakland Center, Student Affairs and Diversity, and University Housing.

The committee recommends the current amendment with Chartwells be accepted, returning the agreement to expire on June 30, 2025 and commencing a cost based model, based on the following criteria:

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- a) Maintain a positive relationship with our current vendor and continue service without interruption to students and the campus community for the next two years.
- b) Capitalize on the national, regional, and on site management experience to optimize the operations for the following three food service components: catering, residential dining, and retail dining.

3. Previous Board Action: On June 5, 2002, the Board of Trustees approved a five-year contract with Chartwells to provide campus food service. On April 6, 2005, the Board of Trustees approved a seven-year extension with the option for two one-year mutual extensions. On December 14, 2014, the Board of Trustees approved a ten-year contract with Chartwells to provide campus food service. On February 15, 2021, the Board of Trustees approved a ten-year contract extension to provide services until June 30, 2035.

4. Budget Implications: The changes proposed will reduce revenues and increase expenses for the Oakland Center and University Housing for fiscal years FY24 and FY25. The projected increased costs for Oakland University are approximately \$2.0 million for FY24 and \$2.4 million for FY25 as well as a buyout of the unamortized signing bonuses and capital improvements of approximately \$5.3 million. The primary revenue sources to cover the increase in expenses include Residential Meal Plan sales, retail sales, and catering sales. Additional funding will come from the Oakland Center reserves. Should it be necessary, the University will fund a line of credit to the Oakland Center and University Housing.

5. Educational Implications: The proposed changes to the agreement between the University and Chartwells will continue to provide a residential and retail dining experience to meet the changing needs and expectations of students, while factoring in the overall cost of providing such a robust food and dining program.

6. Personnel Implications: None.

7. University Reviews/Approvals: This recommendation was formulated by the Director Oakland Center, Senior Director University Housing, Assistant Director for Finance and Operations University Housing and reviewed by the Senior Vice President for Student Affairs and Chief Diversity Officer, Vice President for Finance and Administration and Treasurer to the Board, and President.

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8. Recommendation:

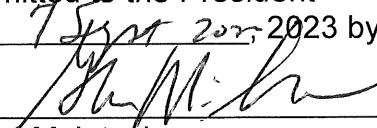
RESOLVED, that the Senior Vice President for Student Affairs and Chief Diversity Officer be authorized to negotiate and execute a food service contract amendment with Compass Group North America-Chartwells Higher Education for residential and retail food services on campus; and, be it further

RESOLVED, that the agreement be reviewed and approved by the Vice President for Legal Affairs and General Counsel prior to execution, and be in compliance with the law and with University policies and regulations, and conform to the legal standards and policies of the Vice President for Legal Affairs and General Counsel.

9. Attachments:

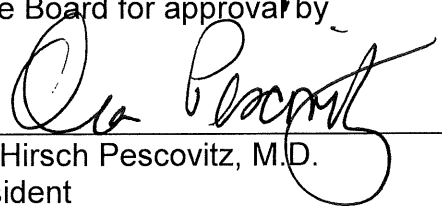
A. Dining Services Amendment Number Nine to Food Services Agreement

Submitted to the President
on 7 Sept 2023, 2023 by



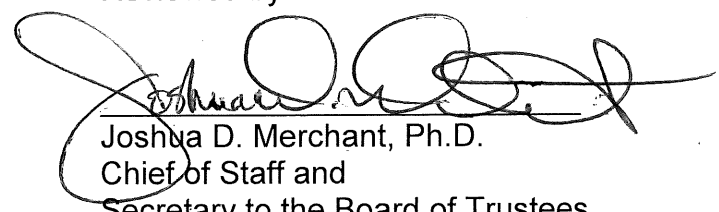
Glenn McIntosh
Senior Vice President for Student Affairs
and Chief Diversity Officer

Recommended on 9/7, 2023
to the Board for approval by



Ora Hirsch Pescovitz, M.D.
President

Reviewed by



Joshua D. Merchant, Ph.D.
Chief of Staff and
Secretary to the Board of Trustees

**AMENDMENT NUMBER NINE TO
FOOD SERVICES AGREEMENT**

This Amendment Number Nine to Food Services Contract effective July 1, 2023, is between Oakland University (“OU”) and Compass Group USA, Inc. by and through its Chartwells Division (“Chartwells”) (individually each a “Party” and collectively the “Parties”).

WHEREAS, OU and Chartwells are parties to that certain Food Services Agreement made and entered July 1, 2015, as amended by that certain First Amendment to Food Services Agreement dated July 1, 2016, and by that Second Amendment to Food Services Agreement dated July 1, 2016, and by that Third Amendment to Food Services Agreement dated January 1, 2018, and by that Fourth Amendment to Food Services Agreement dated July 1, 2018, and by that Fifth Amendment to Food Services Agreement dated September 5, 2018, and by that Sixth Amendment to Food Services Agreement dated July 1, 2019, and by that Seventh Amendment to Food Services Agreement dated October 1, 2019, and by that Eighth Amendment to Food Services Agreement dated May 1, 2021 (collectively, the “Agreement”); and

WHEREAS, the Parties now desire to amend the Agreement;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the Parties agree as follows:

1. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. **Financial Model:** Section 1, The Contractor, of the Agreement is amended by deleting subsection B thereof in its entirety and replacing it with the following:

B. Commencing July 1, 2023, Chartwells shall operate on the campus of OU (the “Premises”), on a cost reimbursable basis, whereby Chartwells will store, prepare, and serve food in the dining rooms, kitchens, service areas, and food storage areas provided by OU for that purpose in the Vandenberg Hall, Hillcrest Hall, the Oakland Center, satellite locations, and any other areas designated by OU, and for hours of operation designated by OU (the “Services”) and OU shall reimburse Chartwells for its Costs of Business, as defined herein, and as mutually agreed between the Parties. Chartwells waives any management fee or administrative fee. “Costs of Business” shall mean the following to the extent that each such cost is incurred between July 1, 2023 and the end of the Term of the Agreement and is paid in according to written policies established by Chartwells for all employees in each applicable employee group. Oakland University shall have the ultimate authority to approve all Costs of Business.:

(i) The reasonable costs of all of Chartwells’ employees performing Services pursuant to this Agreement, either on a full time or part time basis, including but not limited to wages (including overtime), salaries, vacation pay,

holiday pay, Workmen's Compensation Insurance premiums, unemployment insurance, F.I.C.A., group insurance premiums, payroll taxes, travel expenses to the extent approved by the OU in advance, regular health examination cost, defined contribution retirement contributions (excluding penalties, fines, interest and other related fees, salary personnel Thrift Plan cost, employee meals, sick pay, and fringe benefits;

(ii) The costs of all Products, merchandise, materials, and supplies incurred with respect to this Agreement; and,

(iii) The costs of all other operating expenses, including but not limited to such operating expenses as, liability insurance; vehicle expense; computer lease; computer access charges; bank charges; cellular and long distance telephone; VPN corporate access charge; e-mail account charge; expendable equipment; taxes; licenses; permits; parts and equipment and maintenance and rental thereof; small equipment rentals; postage; special security costs; and other similar cash losses or disappearances incurred by Chartwells except to the extent that such losses or disappearances result in whole or in part from the negligence or willful misconduct of Chartwells and/or any of Chartwells' contractors, subcontractors, representatives, officers, employees and/or agents.

For the avoidance of doubt, all operating expenses related to providing the Services, subject to the approval of Oakland University, shall be a Cost of Business which may be charged back to OU, while all amortization/depreciation expenses shall not be a Cost of Business and may not be charged back to OU. Notwithstanding the forgoing, nothing contained herein shall negate Section XVII (C) regarding OU's liability for payment of any unamortized balance of the Capital Investment should an unamortized balance exist upon expiration of termination of this Agreement.

The unamortized balance of the signing bonuses, purchasing rebate and capital investments is projected to be \$5,300,000 (rounded) at 6/30/2025 subject to audit of all costs invested during the contract period.

The food service areas in Vandenberg Hall and the Oakland Center will also be used by CHARTWELLS for the preparation of food for catered functions, as directed by OU.

In the event of a change in social security taxes or the federal or state unemployment taxes, or in the event of an imposition of new federal, state, or local payroll based taxes, or in the event of an increase in the minimum wage rate or the enactment of any "living wage" or similar laws by any governmental entity, or an increase in costs of employee benefits, whether as a result of a change in federal, state or local laws or a federal, state or local legislative or regulatory mandate, the foregoing Costs of Business shall be changed by the projected change in costs to Chartwells from the date such change occurs.

Client acknowledges that Chartwells' responsibilities outlined in Section V, Cleaning and Sanitation, of this Agreement shall be performed by Chartwells on behalf of the Client as part of the Cost Reimbursable arrangement. Chartwells shall bill the Client on a monthly basis for costs incurred in performing responsibilities outlined in Section V of this Agreement.

3. Board Program. Section XIII, Payment to Chartwells, of the Agreement is amended by deleting subsection B(1) thereof in its entirety and replacing it with the following:

1. Billing and Payment of Cost of Business.

CHARTWELLS shall bill OU on a monthly basis. Each monthly bill will include a detailed itemization, in a format approved by OU, of each Cost of Business charged to OU for that month. OU will pay the billing within thirty (30) calendar days of OU's receipt of each bill.

4. Cost Conversion. In conjunction with the Parties' mutual agreement to transition the Agreement to a Cost Reimbursable model effective July 1, 2023, the Parties further agree and acknowledge that the following provisions of the Agreement shall also convert to reflect that costs heretofore assigned to Chartwells shall now be a Cost of Business, chargeable to OU, effective July 1, 2023; provided, however, that all other aspects of these provisions will remain in full force and effect:

- (i)
- (ii) Section III, Facilities, Fixed Equipment, Utilities, Telephone Service, Licenses/Permits – subsections B, D, E, F, H, I, J, L, M, and O, provided however that any additional costs described in this section will not be treated as a Cost of Business if such additional costs result in whole or in part from the negligence or willful misconduct of Chartwells and/or any of Chartwells' contractors, subcontractors, representatives, officers, employees and/or agents.;
- (iii) Section IV, Loose Equipment, Smallware, Glassware, Flatware, Chinaware, Kitchenware, Linens – subsections B, C, E, F and G, provided however, with respect to the purchase of new smallwares, Chartwells shall obtain prior approval from OU and the parties may factor such costs in determining catering fees;
- (iv) Section V, Cleaning and Sanitation – subsections C, F, G, H and J;
- (v) Section VII, Personnel – subsection C;
- (vi) Section XIII, Financial Arrangements; Payment to Chartwells; Accounting Procedures; Taxes; Other Financial Considerations; Exclusivity of Food Service; Product Pricing – subsection B(1); and,
- (vii) Section XVII, Financial Capital Investment and Installation of New Food Concepts – subsection D as it regards vehicle maintenance and repair expenses only.

5. Commissions. Section XIV, Signing Bonus, Commissions, and Additional Payments to OU, is hereby amended by deleting subsection B thereof.

6. Additional Payments – Student Affairs, President’s Fund, and President’s Invitational; GrizzCa\$h Fee. Section XIV, Signing Bonus, Commissions, and Additional Payments to OU, is hereby further amended by deleting subsections C.1. and C.2. thereof.

7. Term. Section XV, Term and Termination, of the Agreement is amended by deleting subsection A thereof in its entirety and replacing it with the following:

A. Subject to section B, below, the term of the Agreement shall be ten (10) years, commencing on July 1, 2015, and continuing through June 30, 2025.

8. Future Investments. The Parties acknowledge and agree that no further investments beyond those already outlined and disbursed in accordance with Section XVII, Financial Capital Investment and Installation of New Food Concepts, and each of its subsections shall occur over the remainder of the Agreement term. Furthermore, and for the avoidance of doubt, for those investments outlined in the various subsections of Section XVII of the Agreement which have not been fully disbursed as of July 1, 2023, no further installations of said investments shall be disbursed.

9. Performance Standards. Appendix M, Performance Standards, of the Agreement is amended by deleting subsection 1 thereof in its entirety and replacing it with the following:

1. Have its Resident District Manager, and District Manager when present, meet with the Director of the Oakland Center and the Senior Director of University Housing, including/or their designee, on a weekly basis for the purpose of discussing financial results and performance. Additionally, have its District Manager and Resident District Manager meet with OU representatives on a bi-annual basis for the purpose of discussing quarterly financial results, business plan goals, and performance.

10. Confirmation and Integration. Except as expressly amended by this Amendment, the Parties hereby confirm and ratify the Agreement in its entirety. The Agreement, as amended by Amendments 1 through 8 and this Amendment 9, constitutes the entire agreement between the Parties and their predecessors pertaining to the subject matter of the Agreement, as so amended, and supersedes all prior and contemporaneous agreements and understandings of the Parties and their predecessors in connection therewith.

11. Access to Records/Audit Rights. At any time during the Term of the Agreement, and for a period of 90 days following the expiration or termination of the Agreement, OU may have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of CHARTWELLS relating in any way to the Agreement, the Services and the Costs of Business charged to OU. CHARTWELLS shall retain all such records until the later of: (i) three years following expiration or termination of this Agreement; or (ii) the final resolution of any litigation, arbitration or other proceeding relating in any way to this Agreement, the Services and/or the Costs of Business charged to OU. OU will provide an invoice to CHARTWELLS any amounts owed as a result of the audit within 30 days. CHARTWELLS will pay OU within 30 days all amounts owed to OU as established by any such audit, with interest at the lower of three and one-half percent (3.5%) per annum, or the highest per annum interest rate allowed by law, from date the original amount was paid by OU to CHARTWELLS until CHARTWELLS reimburses OU in full following the audit. If the audit reveals that CHARTWELLS overcharged OU by more than five (5%) percent for any monthly billing period, then CHARTWELLS will also reimburse OU for the portion of OU's costs incurred in performing the audit for any and all such monthly billing periods.

12. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same original document.

13. Headings. The section headings herein are for convenience only and do not define, limit, or construe the contents of such sections.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed by their duly authorized officers, all done the day and year first above written.

OAKLAND UNIVERSITY

COMPASS GROUP USA, INC. by
and through its Chartwells Division

By: _____

By: _____

Name: _____

Name: Lisa McEuen

Title: _____

Title: Chief Executive Officer

Date: _____

Date: _____