REQUEST FOR QUALIFICATIONS AND PROPOSALS – BEVERAGE SUPPLY/PROMOTIONAL SERVICES,
IRVINE VALLEY COLLEGE

South Orange County Community College District (SOCCCD) is inviting submittals from qualified firms, partnerships, corporations, associations, or professional organizations to provide Beverage Supply/Promotional Services for Irvine Valley College, Bid No. 312. Evaluation will result in an Agreement expected to provide comprehensive professional services to SOCCCD beginning July 1, 2015.

If you would like to submit a response to this Request for Qualifications and Proposals, please send seven (7) hard copies and one (1) electronic copy of requested materials to:

South Orange County Community College District
Facilities Planning & Purchasing
Health Sciences Building
28000 Marguerite Parkway
Mission Viejo, CA 92692
Attn: Shannon Seifert

Questions regarding this RFQ & P may be directed to Shannon Seifert, Purchasing Manager via email at sseifert@socccd.edu.

A mandatory pre-bid conference will be held on March 20, 2015, at 11:00 a.m., in Room SC 260, Student Services Center, Irvine Valley College, at 5500 Irvine Center Drive, Irvine, CA 92681.

The District may modify the RFQ & P prior to the deadline for submittals by issuance of an electronic addendum on the district bid website at www.socccd.edu. Firms/Individuals (Firm) may confirm an interest in providing a submittal by emailing Shannon Seifert.

All responses must be received by mail, recognized carrier or hand delivered by

April 7, 2015, 2:00 P.M.
NOTICE CALLING FOR BIDS

District: SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
Project: BID NO. 312
RFQ&P for Beverage Vending Services,
Irvine Valley College

Bid Deadline: 2:00 P.M., April 7, 2015

Mailing Address & Place of Bid
South Orange County Community College District
Health Sciences Building, 3rd Floor, Room HS-357
Receipt: Purchasing & Facilities Planning Department
28000 Marguerite Parkway
Mission Viejo, CA  92692
Attn: Shannon Seifert

NOTICE IS HEREBY GIVEN that the South Orange County Community College District, of Orange County, California, acting by and through its Governing Board, hereinafter referred to as "DISTRICT," will receive up to, but not later than, the above-stated time, sealed submittals by qualified firms for consideration for RFP & Q for Beverage Vending Services at Irvine Valley College.

A complete Request for Qualifications and Proposals may be viewed at the Office of the Director of Facilities Planning and Purchasing Department at the above address, telephone (949) 582-4678 or previewed on-line at www.socccd.edu.

The Beverage Vending Services firm shall possess the appropriate business license at the time a proposal is submitted.

The DISTRICT reserves the right to reject any or all submittals or to waive any irregularities or informalities in any proposals.

No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for bid opening.

Brandye K. D’Lena
Executive Director,
Facilities Planning & Purchasing

PUBLISH: THE REGISTER
March 5, 2015 &
March 12, 2015
INTRODUCTION

Irvine Valley College seeks to procure reputable beverage vending service to operate on an innovative college campus dedicated to sustainability. SOCCCD would like to foster a more sustainable beverage vending service that economically supports environmentally sustainable product as a way of contributing to the quality of life in the region. SOCCCD desires a Vendor who can deliver a variety of high-quality, sustainably produced and procured items, creating strong customer satisfaction. The evaluation timeframe is expected to be 2.5 months. The selected team will work with the Cafeteria Task Force.

The District is requesting qualification statements and proposals from consultants with a proven track record. At a minimum, three years-experience are required providing similar services at educational facilities.

It is the intent of this Request for Qualifications and Proposals (RFQ & P) to establish the specifications, terms and conditions governing the evaluation process.

BACKGROUND:

IVC, located in Irvine, was founded in 1979 as Saddleback College North Campus and established as Irvine Valley College July 1, 1985. IVC is approximately 100 acres and serves over 14,000 students each year.

IVC is the landlord for Kaplan International Institute, a private language school that trains and educates foreign students in a variety of subjects. Kaplan International Institute offers classes to its students on a year round basis. Kaplan’s students are regular users of the IVC Beverage Vending Services.

Additionally, a new 24,000 SF building is being added to the campus, operation of which is expected to increase enrollment.

Currently, Beverage Vending services are under contract with an outside Vendor. The current agreement expires on June 30, 2015. The agreements cover services at the campus cafeteria and Beverage vending coin and card operated machines. The Beverage Vending services gross sales will be provided at the Pre Proposal meeting.

The Beverage Vending services agreement includes a requirement for payment of a minimum annual commission that is not related to annual sales.

There is a separate Food Services, Food Vending Services and Coffee cart Agreement in place that also will expire on June 30, 2015. The Vendor under this agreement owns and operates all food vending machines on campus and is currently the designated supplier of 25% of the soft drinks for the cafeteria and must receive 100% of the soda fountain beverages from Beverage Vending Agreement. See RFQ & P No. 313 for additional information.

SUBMITTAL INFORMATION AND SUBMITTAL SCHEDULE

All submittals shall be in the form and formatted as specified in this RFQ & P. Submittals which do not include all of the elements as specified, or which deviate from the proposed format and content as
specified, may be deemed “non-responsive” by the evaluation committee and eliminated from further consideration.

Time is of the essence. Submitting Firms will be expected to adhere to the required dates and times.

Submittal questions must be in writing and be directed to Shannon Seifert via email at sseifert@socccd.edu with the subject line indicating “Question(s) for Beverage Vending Services for Irvine Valley College RFQ & P”. If questions are submitted after the deadline, they will not be answered and firms must provide a submittal using the information in the RFQ & P and any addenda provided.

Request for Qualification & Proposals Submittal Schedule

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFQ &amp; P - 1st Advertisement</td>
<td>March 5, 2015</td>
</tr>
<tr>
<td>RFQ &amp; P - 2nd Advertisement</td>
<td>March 12, 2015</td>
</tr>
<tr>
<td>Pre-proposal Conference</td>
<td>March 20, 2015: 11:00-1:00</td>
</tr>
<tr>
<td>Deadline for written questions</td>
<td>March 31, 2015</td>
</tr>
<tr>
<td>Last addendum</td>
<td>April 2, 2015</td>
</tr>
<tr>
<td><strong>Deadline for RFQ &amp; P Submittal</strong></td>
<td>April 7, 2015</td>
</tr>
<tr>
<td>Interviews</td>
<td>April 24, 2015*</td>
</tr>
<tr>
<td>Contract Negotiation</td>
<td>April 23, 2015, If no interviews</td>
</tr>
<tr>
<td></td>
<td>April 28, 2015, If Interviews</td>
</tr>
<tr>
<td>Board Meeting - Approval</td>
<td>May 18, 2015</td>
</tr>
<tr>
<td>Contract Execution</td>
<td>July 1, 2015</td>
</tr>
</tbody>
</table>

During the review of the submittals, SOCCCD will not report apparent errors or request submittal clarification. Submittals will be interpreted as presented. Firms are responsible to proof documents to avoid errors.

The delivery package must be clearly marked with the RFQ & P title, Firm’s name and address, contact name, email and phone number.

Submittals may be withdrawn at any time before the deadline by written request of person signing the Certification.

Late submittals will be returned to the firm without evaluation and firm will not qualify for consideration. It is the firm’s responsibility to ensure submittals are received on or before the deadline and at the identified location. A postmark will not be accepted as meeting the delivery requirement. Third party carriers are routed through the warehouse and may experience delay from carriers stated delivery timeframe. Hand delivery should include time allowances for limited parking, the possibility of elevator failure (third floor delivery) or other potential obstacles to reaching the delivery location in a timely manner.

SCOPE OF WORK
**Services:** The anticipated scope of services and be found in the sample agreement attached to this RFQ & P.

**Overview** The District is considering entering into a three year agreement with two one-year options to renew. These services relate to exclusive sale of Beverage Vending services at the Irvine Valley College campus located at 5500 Irvine Center Drive, Irvine, California 92618 and at the ATEP campus located at 15445 Lansdowne, Tustin, CA 92782. Vending services at the ATEP campus will discontinue or be relocated in late 2017.

**Schedule.** The Beverage Vending Services effort is expected to begin after Board approval is obtained at the May Board meeting with a start date of July 1, 2015 and end no later than June 30, 2020.

**INSTRUCTIONS FOR SUBMITTING QUALIFICATIONS AND PROPOSALS**

Firms shall submit seven hard copies and one electronic copy. Hard copies shall be formatted on standard 8 ½ x 11 white paper with each page clearly numbered on the bottom. Each section, 1 – 12 listed below, shall be tabbed. The original copy shall be marked “Original” and must be wet signed by person authorized to bind the firm.

“Qualifying firms must not be on the federal list of current companies or individuals that have been declared ineligible to receive Federal contracts due to a violation of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended 29 U.S.C. Section 793; and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. Section 4212”.

All submittals shall be in the form and formatted as specified in this RFQ. **Submittals which do not include all of the elements as specified, or which deviate from the proposed format and content as specified, may be deemed “non-responsive” by the evaluation committee and eliminated from further consideration.**

Statement of Qualifications and Proposals should minimally include the following information:

1. **Cover Letter.** A maximum one-page, dated **Introductory Letter** must be submitted including the date, legal name of the respondent, address, telephone and fax numbers, and the name, title, and signature of the person(s) authorized to submit the proposal on behalf of the firm.

2. **Table of Contents.** A **Table of Contents** of the material contained in the proposal should follow the Cover Letter.

3. **Executive Summary.** The **Executive Summary** should contain an outline of your general plan and a brief summary of approach and qualifications to engage in a professional relationship with South Orange County Community College District. (two page maximum)
   a. **Note:** Exhibit C, the Qualification Matrix, shall be completed and placed in this section behind the executive summary. This form will be used as part of the review process.

4. **Experience.** Provide any professional registration, certifications and affiliations for the firm. Describe your experience with Beverage Vending Services and more particularly community college projects. Include the scope of work performed within the last five years. Specify which
Projects were performed by the personnel recommended for this Work. Provide contact names and phone numbers for each listed project.

Briefly describe any interface with associated regulatory agencies.

**Financial Standing** - Provide a current annual report or audited profit and loss statement and the amounts and carriers of both general and professional liability insurance.

Evidence that the Firm is legally certified to conduct business in the State of California for the services offered and experience with college and university educational facilities and other institutional services.

The Firm must have an acceptable history of working proactively to avoid litigation. Provide specific information on termination for default, litigation settled or judgments entered within the last five (5) years.

If the Firm utilizes resources from more than one office, indicate office locations and how work would be coordinated. (One page for summary and up to five additional to highlight project specific information if appropriate)

5. **Personnel.** This section of the proposal should establish the ability of the firm to satisfactorily perform the required services as demonstrated by its representation of staff availability. Information shall further specifically include:

   All personnel assigned to District must:

   a. Possess the minimum qualification (3 Years’ experience) to perform the services provided

   b. Have knowledge and understanding of contract terms and conditions, major services and activities required to perform services provided

   c. Include resumes of proposed personnel, including any proposed sub-consultants who would likely be assigned to projects. Provide name and professional qualifications of proposed personnel. Specifically define the role of each person and outline his or her individual experience. Identify any certifications or licenses held (No more than one page per person).

   d. Firms must provide a statement that all proposed participants will meet or exceed the minimum qualifications specified herein

6. **Scope of Work.** The Scope of Work provided describes the expected effort of the consultant; however, the consultant may recommend refinements, suggestions or brief restatements of the scope of work in this section. Vendor shall describe in detail, what is intended for Beverage Vending services at the college. (Three pages maximum)

7. **Services.** Define which philosophy of the Firm and elaborate on associated business processes. (One page maximum)

8. **Additional Data.** Provide additional information about the firm as it may relate to this RFQ & P Show in detail all capital improvements, or other programs or projects that Vendor proposes. List all equipment to be brought on Campus. Identify what will be considered the property of
Vendor and what will be considered the property of the District. Provide a detailed description of
the procedures and approaches intended to support the District’s goal of improving sustainable
practices.

9. Marketing/Promotions. Vendors shall indicate in detail what marketing/promotions they
are proposing to the District for the award of the exclusive rights at the college over the duration
of the contract. If proposal is based on proposed changes in current practices the changes should
be clearly indicated in the proposals. Identify any constraints or assumptions that affect the
proposal. Services that are not specifically included in RFQ & P exhibits may be provided as
supplementary information. Be thorough and specific as this will form the basis of any contract
negotiations for services.

10. Client References. This section of the proposal permits firms to demonstrate their ability and
competence to satisfactorily perform the required services by using similar services recently
completed for other clients. Information should be furnished for both the firm and any sub
consultants included in the proposal and shall include:

a. Project name, location and description
b. Client contact name
c. Telephone number
d. Email address

This section may also include letters of recommendation or testimonials

11. Agreement Review. Review and comment on any proposed modifications to the attached
draft Agreement(s). Recommend additional work scope if appropriate to allow for improved
outcome for the District.

12. Certification. Complete, provide authorized signature, and date the CERTIFICATION -
REQUEST FOR QUALIFICATION & PROPOSALS enclosed with this RFQ & P

Responses to the RFQ & P should be complete and be prepared to provide an insightful, straightforward,
and concise overview of the capabilities of your company. Deviation from the defined content, order and
format prescribed in this RFQ & P may result a non-responsive evaluation. Submittals received after the
due date and time will not be considered or reviewed. The emphasis of your submittal should be on
completeness and clarity of content.

The District reserves the right to waive any immaterial deviation in a submittal. The decisions to provide
a waiver shall in no way modify or compromise the overall purpose of the submittal, nor excuse the Firm
from full compliance with all requirements if awarded an Agreement.

The sample standard agreement (Exhibit B) is not to be included with the Firm’s submittal.

BASIS OF AWARD

The evaluation of the Beverage Vending Services will be a three-stage process.
1. The first stage will be based on analysis principally focusing on specific experience and qualifications.

2. The optional second stage may include, at the determination of the evaluation committee, short-listed Firms invited for an interview to present their full understanding of, and responsiveness to, this RFQ & P and their specific experience and approach.

3. The third and final stage is successful contract negotiations.

At the conclusion of the second stage, Beverage Vending Services will be selected on the basis of criteria regarding qualifications, experience, demonstrated competence as well as the best interests of the District as determined by the committee, including consideration of fair and reasonable pricing.

Prior to presenting a recommendation to the Board of Trustees, District staff will engage in contract negotiations with selected firm. If negotiations with the first team selected are unsuccessful, negotiations will commence with the second team and so on until an agreement has been successfully negotiated or SOCCCD rejects all proposals.

**Note:** By virtue of submission, the proposing firm declares that all information provided in the Statement of Qualifications is true and correct.
MISCELLANEOUS

1. General information about SOCCCD may be found at http://www.socccd.edu. Recent projects are listed at the “Bids” tab.

2. All submittals shall remain active and valid for ninety days following closing date for receipt. The District reserves the right to negotiate the scope and cost of any submittal.

3. Selection may be made solely on the basis of the stage one submittal review or the selection committee may deem it necessary to interview applicants as part of the selection process.

4. Evaluation may be made solely on the basis of the submittal review or the evaluation committee may deem it necessary to interview applicants as part of the evaluation process.

5. The proceedings of the evaluation committee are confidential. Members are not to be contacted by the proposers. All communication between proposers and the District shall be through the contact information provided above for submitting RFQ & P materials.

6. All materials, except financial information, submitted in response to this RFQ & P shall become the property of SOCCCD and shall be considered a part of Public Record. The District reserves the option to retain or dispose of all submittals whether selected or rejected.

7. Only written changes to the RFQ & P will be valid. Verbal representations will not be binding on either party. Proposers are responsible to monitor the district bid page for addenda information.

8. SOCCCD reserves the right to reject any or all responses to this RFQ & P. Any and all costs incurred in preparing and submitting a response to this RFQ & P is the sole responsibility of the proposer. This request does not constitute an offer of employment or a contract for services.

The District may modify the RFQ & P prior to the deadline for submittals by issuance of an electronic addendum on the District bid website. Firms/Individuals; all addenda will be posted on the bid website and it is the proposers responsibility to ensure they have obtained and reviewed all addenda.

QUESTIONS FROM POTENTIAL RESPONDENTS

Questions regarding this RFQ & P may be directed to Shannon Seifert, Purchasing Manager, at (949) 582-4678 or via email at sseifert@socccd.edu.

Specific Inclusions

1. Exhibit A: Certification – Request for Qualifications
2. Exhibit B: Sample Agreement for Beverage Vending Services.
3. Exhibit C: Beverage Vending Services – Qualification Matrix
4. Exhibit D: Campus Map

Proposals shall be received up to but not later than 2:00 p.m., on the date listed in the schedule.
CERTIFICATION - REQUEST FOR QUALIFICATIONS & PROPOSALS

CERTIFICATION - REQUEST FOR QUALIFICATIONS

The undersigned hereby proposes and agrees to furnish any and all required labor, equipment, material, transportation, insurance, and incidentals necessary to provide quality services pertaining to this solicitation in accordance with the terms and conditions of the RFQ & P; declares that the only persons or parties interested in this submittal as principals are those named herein; that this submittal is made without collusion with any other person, firm or corporation; that the undersigned will contract with SOCCCD to provide these services to the District in the manner prescribed herein.

I certify that I have read the attached Request for Qualifications – Beverage Supply/Promotional Services and the instructions for submitting an RFQ & P. I further certify that I am authorized to bind the Firm noted in this submittal contractually, know that I must provide seven hard copies and one electronic copy of the Firm’s submittal in response to this request and that I am authorized to commit the Firm to the submittal.

I acknowledge the following addenda(s) ____________________

________________________________________  ______________________________________
Signature  Typed or Printed Name

________________________________________  ______________________________________
Title  Phone

________________________________________  ______________________________________
Address  Email

Provide Seal here, if Corporation
This Agreement is made effective as of July 1, 2015 (the “Effective Date”), by and between the South Orange County Community College District, hereinafter called the "DISTRICT", and Vendor name and address, hereinafter called "VENDOR", for Irvine Valley College (the “College”) campus having its principal place of business at 28000 Marguerite Parkway, CA 92692.

WHEREAS, VENDOR is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products,

WHEREAS, VENDOR desires the right to be the exclusive supplier of beverage products to Irvine Valley College, except with regard those locations specified herein,

WHEREAS, VENDOR has submitted a proposal in response to a Request for Proposals issued by the DISTRICT for the exclusive right to dispense beverage products at Irvine Valley College,

WHEREAS, the DISTRICT has determined that it is in the best interests of the DISTRICT to contract with VENDOR to provide services for the sale of beverage products at Irvine Valley College,

WHEREAS, the parties desire to confirm the terms and conditions under which the DISTRICT will contract with VENDOR to install, operate, service, and maintain all equipment dispensing beverage products at Irvine Valley College,

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

ARTICLE 1 VENDOR’S SERVICES RESPONSIBILITIES

1.1 Services. The VENDOR’S services shall consist of those services performed by the VENDOR and VENDOR’S employees as enumerated in this Agreement.

1.2 Standard of Care. VENDOR shall provide the Products and Services herein using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms of this Agreement, and all applicable laws, codes, rules, regulations or ordinances. VENDOR’S Product and Services shall be provided in such a manner as to avoid hindrance, interruption, or delay to daily campus operations.

1.3 Management Services. VENDOR’S management services shall be provided by Name Contact information for Name will be provided to Irvine Valley College’s Representative who will act as the single point of contact between VENDOR and Irvine Valley College. If Name is replaced with another person, the name and contact information for this person will be provided within one week of this change.

a. VENDOR shall provide one hour of local management-level participation at the quarterly Cafeteria Task Force meetings.
b. VENDOR shall provide a quarterly business report which includes at a minimum:

i. information specific to the sale of Product through the Vending Machines including: volume, total sales minus crv, and a comparison with the previous quarter, and

1.4 **Exclusive Beverage Availability Rights.** The DISTRICT hereby grants to VENDOR the following Beverage availability rights:

a. Except as provided herein, VENDOR shall have the exclusive right to make Beverages available for sale and distribution on Campus and throughout the Facilities through beverage vending machines (“Vending Machines”), through the Cafeteria, all concessions and retail locations, including the bookstore, and the right to provide all Beverages sold at athletic contests, booster club activities and all other special events conducted at any location on the Campus or at the Facilities (“Special Events”).

b. Subject to the terms and conditions set forth in this Agreement, the DISTRICT agrees that Products (as defined in Section 11.5) shall be the exclusive Beverages (as defined in Section 11.5) sold, dispensed or served or available on the Campus.

c. The only exception to VENDOR’S exclusive Beverage rights at the Campus is with regard to the Cafeteria (Cafeteria Clause). VENDOR shall have the right to 100% of fountain Beverages sold in the Cafeteria and the right to 75% of the shelf space allocated to bottle and can Beverages sold in the Cafeteria. VENDOR’S equipment shall receive primary placement in the Cafeteria. Only VENDOR’S Products may be sold through VENDOR’S equipment.

d. VENDOR shall have the exclusive right to install Vending Machines throughout the Irvine Valley College campus. After coordination and Agreement with Irvine Valley College, VENDOR shall have the further right to install additional Vending Machines in buildings and facilities acquired and/or constructed by the Irvine Valley College after the date of this Agreement.

e. DISTRICT shall require College, the food service provider (except the items noted in the Cafeteria Clause), concessionaires and other third parties selling Beverages on Campus to purchase Product directly from VENDOR at the prices established pursuant to this Agreement. These purchases will count towards the annual case/gallon threshold outlined in this Agreement.

1. VENDOR will provide a resale number or alternate approach to facilitate assurance of appropriate product purchase through VENDOR.

1.5 **No Competitive Products.** During the entire term of this Agreement:

a. No Competitive Products shall be sampled, sold, served or dispensed anywhere on the Campus, except as pursuant to the Cafeteria Clause.

b. No permanent or temporary advertising, signage or trademark visibility for Competitive Products shall be displayed anywhere on the Campus, including locker rooms, sidelines and players benches.
c. As of the Effective Date and with the exception of the Cafeteria Clause, no Agreement will be entered into or maintained by the School pursuant to which Competitive Products will be associated with the Irvine Valley College campus in any advertising or promotional activity that creates a relationship or connection between Competitive Products and the Irvine Valley College campus.

1.6 **Marketing Rights.** The DISTRICT grants to VENDOR the following promotional rights, which are exclusive as to Beverages, to:

a. Market and promote Beverages in connection with the Campus and the Teams including the use of the College Marks on a royalty-free basis. College acknowledges and agrees that such promotional activities may be conducted in conjunction with VENDOR customers; and VENDOR will have the right to incorporate its customers’ marks with the College Marks on any advertising, point of sale, packaging, or premium items or materials. College hereby grants VENDOR license to use the College Marks on a royalty-free basis for the purposes of promoting Products as provided herein.

b. Refer to VENDOR in any of its marketing materials as a “sponsor” of the Campus, the College and/or the Teams, and refer to any brand of Products in any of VENDOR marketing materials as the “official” Beverage of the Campus, College or the Teams.

c. Undertake Beverage promotions at or in connection with the campus and/or the Teams, including offering Products in promotional packaging bearing the College Marks on a royalty-free basis.

d. Create or market for retail sale merchandise incorporating the College Marks and trademarks of Products.

1.7 **Merchandising Rights.** The DISTRICT grants to VENDOR the following exclusive merchandising rights:

a. College agrees that all fountain drinks dispensed on the Campus in disposable cups will be served in approved VENDOR-identified biodegradable cups.

b. Materials promoting the Products at the point of sale on the Campus, which will include translites and pictorials on dispensing equipment depicting approved cups and Products, will be clearly visible to the purchasing public.

c. Product trademarks will be prominently displayed on each Beverage vending machine on the Campus.

d. College will have the right to pre-approve (i) the concept for any promotional activity undertaken hereunder; and (ii) any artwork or other items created by VENDOR for use in promotional activities or otherwise in accordance with the terms of this Agreement and the incorporation of the College Marks. District agrees that its approval hereunder will not be unreasonably withheld.
e. College agrees that it will not, directly or indirectly (nor will College permit anyone to whom College has granted promotional, advertising, or other rights,) maintain any Agreement or relationship pursuant to which any Competitive Products are associated with the College, the Campus, or the Teams. Nothing contained herein will prevent the sale of bottle and can Competitive Products in the Cafeteria to the percentage set forth in Section 4(a) herein nor will it prevent the on-campus consumption by students, faculty or their guests of Competitive Products purchased outside the Campus.

ARTICLE 2  SCOPE OF VENDOR’S PRODUCT AND SERVICES

2.1 **Equipment.** VENDOR shall place Vending Machines and other beverage equipment necessary to dispense the Products on Campus (the “Equipment”) based upon VENDOR’S survey and Irvine Valley College’s concurrence of the Campus needs. Any vending machine installation at Irvine Valley College shall be mutually agreed between the DISTRICT and VENDOR and subject to the DISTRICT’S prior approval of the location of the vending machine(s).

a. VENDOR shall install the Vending Machines at its sole expense including the addition of any necessary power and water connections as coordinated with Irvine Valley College. The DISTRICT will provide ongoing power and water service to the Equipment. VENDOR shall have the right to place full trademark panels on all sides of its Vending Machines. VENDOR shall retain title to all Vending Machines.

b. Vending Machines will be new or like new machines with an appropriate aesthetic appearance for the campus environment. Aesthetic appearance must be maintained. As new equipment technology is released, VENDOR will work with the college for roll out. To the extent that future technology enhancements, equipment platforms or products to support these platforms are substantially different in scope or composition compared to existing equipment components and products, VENDOR and DISTRICT will work in good faith to negotiation the economic terms for implementation of the new technology equipment.

c. All Vending Machines will include an intelligent power controller for cold product vending machines that meet the specifications outlined in Irvine Valley College’s Vending/Snack Machine Energy Miser Specifications, Section 16900. All equipment brought on site will be energy star rated 2 or better.

d. Irvine Valley College agrees that a minimum of twenty eight (28) Vending Machines shall be placed on Campus throughout the Term. Current locations are noted in Exhibit B

e. VENDOR has provided one debit/credit card reader per bank or location of vending machines unless exemptions for certain locations are provided in writing by the college’s Grants and Contracts Manager. All replacement machines will include debit/credit card readers.

f. The Equipment may not be removed from the Campus without VENDOR’S written consent, and the Irvine Valley College agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by VENDOR. At the end of the Term, VENDOR shall have the right to and, in the event another VENDOR is the successful
bidder for the next term will be required to, remove all Equipment from the campus at no 
expense to the Irvine Valley College.

g. VENDOR or one of its subsidiaries or affiliates shall retain ownership in and title to all 
Equipment.

2.2 **Service.** During the Term and at no cost to the School, VENDOR will stock and service, if necessary, 
the Vending Machines and any additional Vending Machines determined by the parties to be 
installed at new locations on the Campus.

a. It is anticipated that two to three services calls per week will take place at the Irvine Valley 
campus. Service calls for malfunctioning machines or out-of-stock product will be addressed 
promptly (within 3 business days). Service call phone numbers will be prominently displayed 
on all machines to facilitate service calls.

b. VENDOR will provide telemetry service resulting in 24-7 central operations network 
notification of equipment status for repairs and fills upon receipt of system.

c. Assuming issues are unrelated to vandalism, after five repair calls on the same machine within 
a six month period of time, machine shall be replaced with newer equipment at the discretion 
of the college.

d. Irvine Valley College shall permit VENDOR, its employees, agents and representatives to enter 
the campus for purposes of servicing and stocking the Equipment during normal college 
hours.

e. Vending Service vehicles are not permitted off-road. Asphalt pathways on Campus interiors 
do not have a traffic index sufficient to withstand the weight of delivery trucks. Alternate 
means, i.e. handcarts, will be necessary for bringing product to interior spaces of the campus. 
Routing approvals must be approved by the College Facilities Director prior to first service. 
Any truck caught violating the approved routing will be fined $100/occasion.

f. VENDOR will not be obligated to provide service during periods in which it is prevented from 
doing so due to strikes, civil disturbances, or other causes beyond the control of VENDOR.

g. VENDOR shall be responsible for the repair and replacement of the Equipment to the extent 
necessary as a result of theft and vandalism. College agrees to provide reasonable assistance 
to VENDOR in apprehending and prosecuting thieves and/or vandals. VENDOR may remove 
or move equipment suffering repeat theft, vandalism, destruction or loss.

h. VENDOR will provide the Director of Student Development or designee with $25 dollars in 
petty cash toward refunds for machine malfunction. This amount will be replenished at the 
request of the Director and on an as-needed basis.

2.3 **Product.** Vending products to be offered are certain Products as determined by VENDOR from 
time to time.

a. VENDOR and the District agree that, at a minimum, the following products will be available at 
each location on the Campus where vending machines are located: Product Name Carmel
Soda, Diet Carmel Soda, Lemon/Lime Product and Water Product. At least ten locations will provide alternative products such as sports drinks, energy drinks, juices, chilled coffee drinks, or iced tea. VENDOR will suggest healthier beverage products whenever feasible.

b. The DISTRICT agrees that, unless student survey with a high degree of validity and reliability indicates otherwise, all Vending Machines located on Campus shall vend 20 oz. products.

c. Additional product information is included in the “Consideration” section.

ARTICLE 3 ADDITIONAL VENDOR SERVICES

Additional vending machines may be placed on campus with the written and mutual Agreement of the parties. Specific locations are not guaranteed.

ARTICLE 4 TERM

4.1 **Time is of the Essence.** Time is of the essence in the performance of each Party’s obligations under this Agreement, including without limitation VENDOR’S performance of the service required hereunder and DISTRICT’S payment of all sums due to VENDOR.

4.2 **Term.** The term of this Agreement shall be the three (3) year period beginning on the Effective Date hereof and ending on June 30, 2018 with two (2) one (1) year automatic options for renewal with a 60 day written notice if option is not taken by either party and under the same terms and conditions (“Term”) unless sooner terminated as provided herein. Either party may choose not to exercise a renewal option by providing the other party with sixty (60) days written notice prior to the start of the renewal period.

4.3 **Renewal.** Both parties understand that at the termination of five years from Effective Date the DISTRICT is required to send out a “Requests for Qualifications and Proposals”. After five years, there is no possibility for automatic renewal. The DISTRICT will send out the “Requests for Qualifications and Proposals” to interested parties at least thirty days prior to the expiration of the Term.

ARTICLE 5 INDEMNITY AND INSURANCE

5.1 **Indemnity.**

a. VENDOR will indemnify and hold the DISTRICT, Irvine Valley College, its Board of Trustees, officers, and employees harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys’ fees) arising out of: (1) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of VENDOR’S Products; and/or (iii) the negligence or willful misconduct of VENDOR.

b. The DISTRICT will indemnify and hold VENDOR, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys’ fees) arising out of: (i) its
breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the DISTRICT.

5.2 **General Liability.** Each party hereto maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance with such insurance carriers and in such amounts of insurance coverage reasonably acceptable to the other party.

a. At a minimum, policy must provide: Public Liability Insurance and Products Liability Insurance with limits of $1,000,000 single person and $5,000,000 aggregate coverage; $1,000,000 Employer's Liability Insurance per accident limit for bodily injury and property damage liability; $1,000,000 products liability; $1,000,000 for each accident or death; $500,000 comprehensive automotive liability, injury or death of each person; $100,000 each accident in a single policy or a combination of an underlying and excess or umbrella-type coverage.

b. Each party agrees to name the other, and each of its Affiliates, and their respective officers, directors, employees, agents, representatives and successors and assigns, as additional insured’s on such insurance during the Term. Such insurance will contain a waiver of subrogation with respect to the additional insured’s.

5.3 **Worker’s Compensation.** Worker’s Compensation Insurance covering all VENDOR’S employees connected with the performance of food service and food vending machine operations.

5.4 **Additional Insureds.** These policies shall name the DISTRICT and its Board of Trustees, officers, employees and agents as an additional insured to the extent indemnified and shall provide an endorsement stating the necessity of thirty (30) days’ written notice to the DISTRICT before cancellation, reduction or other modification of coverage. These policies shall be primary and non-contributing with any insurance carried by the DISTRICT and shall contain a severability of interests clause with respect to gross liability, protecting each named insured as though a separate policy had been issued to each. Certificates of the above policies shall be furnished to the DISTRICT, together with copies of receipts for all premium payments made thereon.

5.5 **Property.** DISTRICT shall keep its buildings, including the Premises and all property contained therein, insured against loss or damage from fire, explosion or other cause normally covered by standard broad form property insurance policies.

5.6 **Verification.** Either party shall have the right, during the Term from time to time, to request copies of certificates of insurance and/or other evidence of the adequacy of the above insurance coverage’s.

5.7 **Cancellation.** VENDOR must provide the DISTRICT with a 30 day cancellation notice in the event that VENDOR’S insurance policy is cancelled before the expiration date of the term.

5.8 The provisions of this Section shall survive the termination of this Agreement.

---

**ARTICLE 6  CONSIDERATION**

6.1 **Pricing.**
a. The initial vend prices are set forth herein.

b. Initial Post mix, bottle and can pricing and products are listed in attached Exhibit A. Pricing is fixed through the first Agreement Year of the contract. VENDOR pricing will not exceed more than 5% annually in each of Agreement Years 2-5.

c. Pricing is subject to change throughout the term of this Agreement as set forth above. VENDOR shall notify the DISTRICT in writing prior to the implementation of any price increase.

6.2 **Annual Sponsorship Fee**. An annual sponsorship fee, as follows (the “Annual Sponsorship Fee”):

<table>
<thead>
<tr>
<th>Agreement Year</th>
<th>Applicable Time Period</th>
<th>Amount*</th>
<th>Due Date: within 60 days after:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>July 1, 2015 – June 30, 2016</td>
<td>$xx,000</td>
<td>Execution of Agreement by parties.</td>
</tr>
<tr>
<td>2</td>
<td>July 1, 2016 – June 30, 2017</td>
<td>$xx,000</td>
<td>July 1, 2016</td>
</tr>
<tr>
<td>3</td>
<td>July 1, 2017 – June 30, 2018</td>
<td>$xx,000</td>
<td>July 1, 2017</td>
</tr>
<tr>
<td>4**</td>
<td>July 1, 2018 – June 30, 2019</td>
<td>$xx,000</td>
<td>July 1, 2018</td>
</tr>
<tr>
<td>5**</td>
<td>July 1, 2019 – June 30, 2020</td>
<td>$xx,000</td>
<td>July 1, 2019</td>
</tr>
</tbody>
</table>

** Term 4 and 5 are at the option of the DISTRICT.

6.3 **Commission**. Commission, as a percentage of the actual cash (“cash in bag” or “CIB”) collected by VENDOR from the Vending Machines placed at the Facilities, less any applicable fees or deposits (“Commissions”). Such Commissions shall be at the rate(s) set forth below (the “Commission Rate”) and shall be calculated as follows:

\[(\text{CIB} \times \text{Commission Rate}) – \text{applicable CRV} = \text{Commissions due.}\]

<table>
<thead>
<tr>
<th>Product</th>
<th>Minimum Vend Price</th>
<th>Commission Rate*</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 oz. carbonated soft drinks and water</td>
<td>$1.25</td>
<td>xx%</td>
</tr>
<tr>
<td>20 oz. carbonated soft drinks and water</td>
<td>$1.50</td>
<td>xx%</td>
</tr>
<tr>
<td>Various other Products: Example-electrolyte or caffeine enhanced beverages etc.</td>
<td>Up to $2.75 depending on product</td>
<td>xx%</td>
</tr>
</tbody>
</table>

*Commission Rate stated above shall only apply to Products sold by VENDOR through its Vending Machines at the beginning of the Term. If VENDOR proposes any new products to the Customer during the Term, then VENDOR shall have the right to apply a different Commission Rate and/or Minimum Vend Price for such new product.
6.4 **Commission Payment.** Commissions shall be remitted by VENDOR to the Customer within 30 days of the end of each 4-week accounting period established by VENDOR. VENDOR shall make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within one year of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any commission payment from VENDOR if Commissions fail to reach a certain threshold amount per period or quarter. The applicable threshold amounts vary based on the payment period and will be established and communicated pursuant to VENDOR’S policies and procedures related to its Full Service Vending business, as may be revised by VENDOR from time to time.

6.5 **Change to Commission Rate.** Customer acknowledges and agrees that VENDOR established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Agreement. If, during the Term, sales taxes should increase by more than five percent (5%), then VENDOR shall have the right to automatically reduce the Commission Rate by the same percentage amount.

6.6 **Rebates.** Each year throughout the Term, VENDOR shall calculate the total applicable Cases of Packaged Products purchased from VENDOR by the DISTRICT and its Food Service Provider pursuant to this Agreement, and shall provide the DISTRICT with rebates calculated based on applicable amounts set forth below (the “Rebates”). The Rebates, if applicable, shall be paid by VENDOR within 60 days of the end of each applicable Agreement Year during the Term.

<table>
<thead>
<tr>
<th>Rebate Amount</th>
<th>Applicable Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>$xx/Case</td>
<td>24 pk Packaged Products</td>
</tr>
<tr>
<td>$xx/Case</td>
<td>15 pk, 12-pk Packaged Products</td>
</tr>
</tbody>
</table>

6.7 **Growth Incentive Fund.** Each Year during the Term, VENDOR will offer Customer a growth incentive fund based on the incremental growth of Cases. Each Year will be a “Performance Period.” The “Base Period” with respect to each Performance Period will be the immediately preceding twelve-month period or Year. The number of Cases purchased during each Performance Period will be compared with the number of Cases purchased during the corresponding Base Period. If, and to the extent that, (i) the number of Cases purchased during the Base Period is greater than XX Cases and (ii) the number of Cases purchased during any Performance Period exceeds the number of Cases purchased during the corresponding Base Period by Twenty-Five Percent (25%) or more, VENDOR will pay the Customer a growth incentive fund in the amount of XX Dollars ($X,000) (“Growth Incentive Fund”). The Growth Incentive Fund, if any, will be paid within forty-five (45) days after the end of an eligible Year.

6.8 **Additional Consideration**

a. In addition to the consideration specified above, VENDOR shall provide the following further consideration to the DISTRICT.
b. VENDOR will provide annual Product donations of a total of XX cases of a combination of 12 oz. cans of carbonated soft drinks and 16.9 oz. bottles of Aquafina per Year, provided however, that Irvine Valley College will administer all requests through a central contact.

c. Annually and submitted on January 15th of each year, VENDOR shall provide scholarships funds to be distributed to Irvine Valley College students in the total amount of XX & 00/100 Dollars ($XX) (the “Scholarship Funds”). The Scholarship Funds may be deposited to either the Irvine Valley Foundation Account or to the Osher Foundation in the name of Irvine Valley College. The scholarships recipients shall be as determined by the Irvine Valley College. VENDOR shall receive recognition for the scholarships that are awarded using the Scholarship Funds.

d. Annually and upon request, VENDOR shall provide Sustainability Sponsorship funds to be distributed to Irvine Valley College in the total amount of XX & 00/100 Dollars ($XX). The Sustainability Sponsorship may be deposited to the Irvine Valley Foundation Account.

e. Annually and upon request, VENDOR shall provide Marketing Allowance funds to be distributed to Irvine Valley College in the total amount of XX & 00/100 Dollars ($XX). The Marketing Allowance may be deposited to the Irvine Valley Foundation Account.

f. An Initial Support Fund in the amount of XX & 00/100 Dollars ($XX) (Foundation for California Community Colleges Education Grant) payable to the DISTRICT within sixty (60) days of the signing of this Agreement by both parties. The Initial Support Funds may be deposited to either the Irvine Valley Foundation Account or to the Osher Foundation in the name of Irvine Valley College.

g. Sideline Kits valued at up to XX Dollars ($XX). VENDOR shall make these kits available to Irvine Valley College before September 1st each Agreement Year and may include the following items:

i. 10 gallon coolers 5 Each

ii. 7 gallon coolers 2 Each

iii. 32 ounce water bottles 1 Case

iv. 8 ounce water cups 6 Cases

v. 48 quart ice chests 3 Each

vi. Towels 1

VENDOR will confirm annually the final configuration of sideline kits with Irvine Valley College.

h. A minimum of two annual appearances per Agreement Year at Irvine Valley College with Promotional Sampling Vehicles on dates to be agreed upon by the DISTRICT and VENDOR.

i. As has been VENDOR’S practice in responding to disaster situations, VENDOR will do whatever it can to provide water and other needed resources in the event of a disaster, including in support of emergency preparedness plans developed by our customers, including the
DISTRICT. Under normal operating conditions, VENDOR will make every effort to deliver requested water supplies as quickly as is possible. During an emergency or disaster situation, however, VENDOR’S ability to deliver water supplies may be hampered by closed or damaged roadways resulting from the disaster and VENDOR’S ability to manufacture and distribute bottled water may be further hampered if VENDOR’S local plant and warehouse lose power for an extended period of time or are more seriously damaged by the natural disaster or other emergency event. Accordingly, VENDOR cannot be held responsible for failure to provide water supplies to any customer or location, under these circumstance or any other circumstances beyond VENDOR’S control. VENDOR’S commitment to use its best efforts to provide water supplies in an emergency event, will not supersede VENDOR’S commitment to the safety of its employees and VENDOR will not place any employee in a situation which may jeopardize the employee’s safety and well-being. Notwithstanding the foregoing, if a state of emergency is declared at the local, state, or national level, VENDOR will abide by the directions of the law enforcement officials coordinating disaster relief efforts.

ARTICLE 7   TAXES

VENDOR shall be responsible only for the remittance of taxes on the sales of Products through Vending Machines located at the Irvine Valley College campus. DISTRICT and College acknowledge that VENDOR is not responsible for any taxes payable, fees or other tax liability incurred by DISTRICT or College in connection with any fees payable by VENDOR under this Agreement. VENDOR shall not be assessed common area maintenance fees based on its occupation of the space allocated to Vending Machines.

ARTICLE 8   BREACH OF CONTRACT AND TERMINATION

8.1   Vendor Termination for Breach. If any of the material terms of this Agreement are terminated, violated, prohibited, or limited during the Term of this Agreement for any reason, including by way of final judicial opinion, imposition, or modification of any local, state or federal laws and/or regulations other than by action or inaction of VENDOR, (“Affected Rights”), then VENDOR may give the DISTRICT written notice of such event and the DISTRICT shall have a thirty (30) day period within which to cure such breach. If the DISTRICT fails to cure such breach within a thirty (30) day period, VENDOR shall have the right to:

a.  
   i. substitute other of its Products offered by VENDOR for the Products subject to such Affected Rights;
   
   ii. reduce VENDOR’S ongoing fees including support and commissions payable hereunder to an amount equal to the then-current ongoing fees VENDOR would pay for the right to market, sell or distribute the remaining Products as a result of such Affected Rights; and
   
   iii. recover an amount pursuant to Section 15 (a) (2) (ii) and 15 (b) below relative to the Products subject to such Affected Rights, as determined by VENDOR, or

b.
i. terminate this Agreement in its entirely; and

ii. VENDOR shall, without prejudice to any other right or remedy available to VENDOR, obtain a reimbursement from the DISTRICT of any unearned Annual Sponsorship Fee paid by VENDOR to the DISTRICT for the Agreement Year in which such termination occurs. The amount of such reimbursement shall be determined by multiplying the Annual Sponsorship Fee paid in the Agreement Year during which such termination occurs by a fraction, the numerator of which is the number of months remaining in such Agreement Year at the time of such termination or limitation and the denominator of which is twelve.

8.2 **District Termination for Breach.** The DISTRICT may terminate this Agreement for any breach of this Agreement’s material terms by VENDOR. The DISTRICT shall provide VENDOR with written notice of the breach and provide a thirty (30) day opportunity for VENDOR to cure such breach. If VENDOR fails to cure the breach within the thirty day period, the DISTRICT may terminate the Agreement upon written notice to VENDOR. District shall return any unearned Annual Sponsorship Fee already paid, minus a pro-rated average of previous commissions due if any commission remains unpaid by VENDOR.

8.3 **Termination, other.** Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if:

a. the other party, or any parent of such other party, shall:

   i. have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not staying, withdrawn or settled within sixty days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e) (2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement;

   ii. file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within sixty days thereafter); or

   iii. admit in writing its inability to pay its debts as such debts become due.

**ARTICLE 9 DISPUTES, MEDIATION AND ARBITRATION**

9.1 **Work to Continue.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, VENDOR agrees to continue to diligently perform and provide services hereunder until completion or termination of the Agreement.
9.2 **Mediation Requirements.** All claims, disputes or controversies arising out of or relating to the PROJECT or to this Agreement or the breach thereof shall be first attempted to be resolved through mediation.

9.3 **Legal Expenses.** The DISTRICT and VENDOR agree that, in the event that a dispute comes to litigation, each party will bear its own legal expenses.

### ARTICLE 10 DISTRICT’S RESPONSIBILITIES

10.1 **District Provided Information.** The DISTRICT shall provide to the VENDOR information regarding requirements for the Services, including information regarding the current equipment locations and potential future equipment locations.

10.2 **District Representative.** Irvine Valley College shall appoint a representative authorized to act on the DISTRICT’S behalf. The DISTRICT or its authorized representative shall render decisions in a timely manner pertaining to requests submitted by the VENDOR. Unless modified by written notice by the DISTRICT to the CONSULTANT, the DISTRICT Representative is:

   **Name, Title**

10.3 **Notification.** The DISTRICT shall give prompt written notice to the VENDOR if the DISTRICT becomes aware of any fault or defect in the equipment or services. However, the DISTRICT'S failure or omission to do so shall not relieve the VENDOR of his/her responsibilities hereunder and the DISTRICT shall have no duty to observe, inspect or investigate the equipment.

### ARTICLE 11 MISCELLANEOUS

11.1 **Affirmative Action.** VENDOR agrees that VENDOR will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, marital status or age of such persons.

11.2 **Compliance with Applicable Laws.** The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT’S general right of inspection to secure the satisfactory completion thereof. VENDOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to VENDOR and VENDOR’S business, equipment and personnel engaged in services covered by this Agreement or accruing out of the performance of such services.

11.3 **VENDOR Accounting Records.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records, and files of the DISTRICT and the VENDOR, including, but not limited to the costs of administration of this Agreement, shall be subject to examination and audit of the State Auditor at the request of the DISTRICT or as part of any audit of the DISTRICT for a period of five (5) years after the end of each Agreement Year with record to the records pertaining to such Agreement Year. During this time, VENDOR shall maintain accounting records and make them available upon request of the DISTRICT for reproduction or inspection.
11.4 **Cumulative Rights; Non Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or inequity. The failure of DISTRICT or VENDOR to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

11.5 **Definitions**

a. **Agreement Year.** Each twelve-month period beginning with the first day of the “Term” and subsequent anniversaries thereof.

b. **Approved Cups.** The disposable cups approved by VENDOR from time to time as its standard trademark cups and other containers approved by VENDOR from time to time and bearing the trademarks(s) or VENDOR and/or other products. In addition, VENDOR agrees that the DISTRICT shall have the right to produce limited run commemorative plastic cups reasonably acceptable to VENDOR for use at the college and that such cups shall also be considered to be Approved Cups, provided that VENDOR’S trademark(s) for VENDOR shall be included on such commemorative cups. The use and size of VENDOR’S trademark(s) on such commemorative cups shall be subject to the prior approval of VENDOR.

c. **Beverage(s).** All carbonated soft drinks and all non-carbonated, non-alcoholic beverages or soft drinks, including, but not limited to, fruit juices, fruit juice-containing drinks, and fruit-flavored drinks (“Fruit Drinks”); ready-to-drink chilled tea and coffee products; hypertonic, isotonic, hypotonic drinks (sports drinks and fluid replacements), and energy drinks and packaged carbonated and still waters (including spring, mineral or purified, liquid concentrate teas (LCT), and frozen carbonated and non-carbonated beverages (FB). Specifically excluded are non-branded coffee products, hot chocolate, tea, unflavored dairy products, alcohol, and tap water.

d. **Campus.** The entire premises of the Irvine Valley College including all athletic facilities and concession stands and, for each building, the grounds, parking lots and vending areas. For the purpose of defining exclusivity, the Irvine Valley College Food Service locations, specifically the cafeteria located in the Student Services Building (the “Cafeteria”), are included in the definition of Campus, however, VENDOR’S rights with regard to the supply of bottled and canned Beverages in the Cafeteria are non-exclusive as further defined herein. Fountain beverages served in the Cafeteria will remain exclusively VENDOR product.

e. **Cases.** The number of cases of Packaged Products purchased by the DISTRICT from VENDOR, initially delivered in quantities of 24, 15 and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as agreed upon between VENDOR and college, from time to time.

f. **College Marks.** The Designations (as defined below) and the college’s characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, and other proprietary designations which are owned, licensed to or
controlled by the DISTRICT and which relate to the college and which are in existence at the beginning of the Term or which will be created during the Term. For clarity purposes, College Marks shall include, without limitation, characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, and other proprietary designations associated with or related to all intercollegiate athletic teams associated with the college at the beginning of the Term or which will be created during the Term, if any.

g. **College Year.** Consecutive calendar days running from July 1st of a calendar year through June 30th of the following calendar year.

h. **Competitive Products.** Any and all Beverages other than Products (as defined herein).

i. **Designations.** Including but not limited to: “A Proud Sponsor of Irvine Valley College”, Official Water and Soft Drink of Irvine Valley College”, and “Official Sponsor of Irvine Valley College”.

j. **Equipment.** The following types of equipment owned and operated by VENDOR and used to sell or dispense the Products: full service vending machines, retail single-serve food service equipment and fountain service equipment.

k. **Facilities.** The entire premises of every facility owned, leased, occupied or operated by the college, now or in the future, including all buildings, the grounds, parking lots, book stores, athletic facilities and concession stands, and for each building, the ground parking lots, and vending areas. Food Service Provider locations including associated dining areas, snack bars and food carts, while included as Facilities, have been defined separately within this Agreement.

l. **Food Service Provider.** Food Service Provider which may serve at the Facilities at any point during the Term. The DISTRICT acknowledges and agrees that this Agreement is based on the DISTRICT’S current operating model/use of third party Food Service Providers and if/when such Agreement between DISTRICT and Food Service Provider expires or is terminated, and the DISTRICT enters into a new arrangement with Food Service Provider; then any such new or subsequent Agreement between the DISTRICT and any Food Service Provider shall require such Food Service Provider to abide by the applicable terms set forth in this Agreement.

m. **Gallons.** Number of gallons of the Post-mix Products purchased by the DISTRICT from VENDOR.

n. **Packaged Products.** Beverages that are distributed in pre-packaged form (i.e., Bottles & Cans). A list of VENDOR’S Packaged Products is found in attached Exhibit A which may be amended upon mutual written Agreement between the parties.

o. **Post-mix Products.** Beverage products used to create and dispense fountain beverages. A list of VENDOR’S Post-mix Products is found in attached Exhibit A which may be amended upon mutual written Agreement between the parties.
p. **Products.** Beverage products manufactured, sold and distributed by VENDOR and purchased directly from VENDOR or sold through full service vending machines owned, stocked and serviced exclusively by VENDOR and include fountain drinks in the Cafeteria.

11.6 **Employment with Public Agency.** VENDOR, if an employee of another public agency, agrees that VENDOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement. Additionally, No member, officer or employee of the DISTRICT during tenure or for one year thereafter, shall have any interest direct or indirect, in this Agreement or the proceeds thereof.

11.7 **Governing Law.** This Agreement shall be governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in Orange County and such county shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

11.8 **Independent Contractor.** VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT’S employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. VENDOR assumes the full responsibility for the acts and/or omissions of his or her employees or agents as they relate to the services to be provided under this Agreement. VENDOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including, but not limited to, State Unemployment Insurance or Worker’s Compensation. VENDOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including, but not limited to, State Unemployment Insurance or Worker’s Compensation.

11.9 **Marginal Headings; Captions.** The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of VENDOR and DISTRICT hereunder.

11.10 **Non-Assignment.** The obligations of the VENDOR pursuant to this Agreement shall not be assigned by the VENDOR. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or VENDOR. The sale or transfer of a majority membership interest in VENDOR firm or the admission of new member to the VENDOR firm which causes there to be a change in majority ownership and / or control of VENDOR firm shall be deemed and assignment for purposes of this Agreement. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to the Agreement a third party beneficiary of any right created by the Agreement or by operation of law.

11.11 **Permits/Licenses.** VENDOR and all VENDOR’S employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.
11.12 **Notifications.** All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served requiring signature acknowledging receipt, or if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section.

11.13 **Communications** between the parties shall be sent to the following addresses:

<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>VENDOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Title</td>
<td>Title</td>
</tr>
<tr>
<td>Irvine Valley College</td>
<td>Company</td>
</tr>
<tr>
<td>28000 Marguerite Parkway</td>
<td>Address</td>
</tr>
<tr>
<td>Mission Viejo, CA 92692</td>
<td>Address</td>
</tr>
<tr>
<td>email address</td>
<td>email address</td>
</tr>
</tbody>
</table>

Copy to:  
Dr. Debra L. Fitzsimons  
Vice Chancellor, Business Services  
28000 Marguerite Parkway  
Mission Viejo, CA 92692  
dfitzsimons @socccd.edu

11.14 **Severability.** If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herein, but all remaining provisions will remain and continue in full force and effect.

11.15 **Entire Agreement / Amendment.** This Agreement and any exhibits attached hereto represent the entire Agreement between the DISTRICT and VENDOR and supersede all prior negotiations, representations or Agreements, either written or oral with respect to the services contemplated. This Agreement may be amended or modified only by an Agreement in writing signed by both the DISTRICT and the VENDOR.

11.16 **Binding Agreement.** The DISTRICT and VENDOR, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement.

This Agreement entered into as of the day and year first written above.

<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>VENDOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Orange County Community College District</td>
<td>Name</td>
</tr>
</tbody>
</table>
Exhibit A

Product Pricing

See attached sheets from proposal numbered xx-xx
Exhibit B – Existing Machines

<table>
<thead>
<tr>
<th>Area</th>
<th>Type</th>
<th>Serial No.</th>
<th>Unit</th>
<th>Barcode</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Product</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Request for Qualifications and Proposals
RFQ & P Beverage Supply and Promotional Services, Bid No. 312
## Beverage Vending Services RFQ&P - Qualification Matrix

**Table of Contents**
- Executive Summary
- Experience
- Personel
- Scope of Work / Scope of Services
- Services - Philosophy
- Additional Data About Company
- Marketing/ Promotions
- Client References/Recommendations
- Agreement Review
- Certification
- Reviewers Impression of Proposal and or Past Experience with Firm (+/- 10%)

### Firm Information
- **Name**: 
- **Location (City/State)**: 

**Note**: Firm to validated quantities listed on this sheet with supporting documentation in appropriate proposal tab sections.

### Tab Description

<table>
<thead>
<tr>
<th>TAB</th>
<th>Description</th>
<th>Potential Points</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cover Letter</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Page - Professional/Format/Signed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Table of Contents</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Correct &amp; Professional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Executive Summary</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 Page Maximum (plus Exhibit E) - Professional - coherent - relevant - concise</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SIMPLE!</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Experience</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Years in business (minimum 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4a</td>
<td>Identify Locations by Name below and years of service under type</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Example: XYZ School District</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>K-12</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4c</td>
<td>Financial Standing-not evaluated with Proposals, keep sealed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4d</td>
<td>Legally certified to conduct business in California</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>4e</td>
<td>Location(s) to execute work for SOCCCD</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5a</td>
<td>5 yrs experience</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>5b</td>
<td>Ability to understand terms of contract and provide services</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>5c</td>
<td>Resume</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>5d</td>
<td>Statement that all participants will meet or exceed min. state qualifications.</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Scope of Work / Scope of Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Demonstrated understanding of desired services</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Enhancements?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Services - Philosophy</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 Pages Maximum - Services Provided - Firm Philosophy - Process</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Additional Data About Company</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Improvements</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>List equipment</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sustainability</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Marketing/ Promotions</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Promotions</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Constraints</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Client References/Recommendations</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of References with phone numbers</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of Written Recommendations from past clients and/or testimonials</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Agreement Review</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review and comments attached</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Certification</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Signed &amp; correct # of addenda noted</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

### Subtotal:
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>

### Total:
| | |

### Optional Notes:

---

Request for Qualifications and Proposals
RFQ & P Beverage Supply and Promotional Services, Bid No. 312