SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
28000 Marguerite Parkway
Mission Viejo, CA 92692

BID NO. 302

Request for Proposals
Beverage Supply/Promotional Agreement for Irvine Valley College

South Orange County Community College District desires to contract with a 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.

I. BACKGROUND:

A. Irvine Valley College is one of two community colleges in the South Orange County Community College District. Irvine Valley College is located in the rapidly growing community of Irvine and serves the educational needs of students in the Irvine, Tustin, Lake Forest, Laguna Beach and Newport Beach areas and has a current student enrollment of approximately 15,500 students. The District estimates that the total student enrollment at Irvine Valley College will reach 16,000 students by the year 2015.

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 cafeteria.

IVC is undergoing a landscape improvement which will result in an amphitheater adjacent to the IVC cafeteria. This location is expected to host numerous events.

IVC is the parent campus for the ATEP location which will be included as a service area for this contract.

B. Currently, beverage vending services and cafeteria beverage services are under contract with an outside Vendor. The current agreement expires on June 30, 2011. The agreement provides can/bottle machines at various campus locations. The district receives a $25,000 minimum sponsorship fee in addition to commissions collected from all sales of products. Reported total gross sales for the past years which previously included beverages in the cafeteria are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004-2005</td>
<td>$ 75,865</td>
</tr>
<tr>
<td>2005-2006</td>
<td>$ 76,071</td>
</tr>
<tr>
<td>2006-2007</td>
<td>$ 84,872</td>
</tr>
</tbody>
</table>
There is a separate food service and coffee cart supplier agreement in place that also will expire on June 30, 2011. See RFP Bid No. 301 for additional information.

II. SCOPE OF AGREEMENT:

The District is considering entering into a three (3) year agreement with two (2) one (1) year options to renew relating to exclusive sale of carbonated soft drinks 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. The scope of the contract will be as follows:

Under the scope of this bid agreement the Vendor will provide and operate at their expense new coin operated carbonated soft drink and bottled water vending machines at all present locations and will be the designated supplier of carbonated soft drinks for the cafeteria soda fountain. The food services Vendor will operate the fountain. Proposals may also recommend installation of vending machines at new locations. Approval of new vending machine locations shall be at the District’s discretion. Proposals shall include all necessary information for evaluation including the sale price of all bottled and canned drinks to be sold at the vending machines as well as financial conditions and marketing program information.

The DISTRICT will reserve the right to sell on campus through the cafeteria or at vending machines, non-carbonated and non-water products (i.e. teas, coffee, hot chocolate, etc.) from other Vendors. The DISTRICT reserves the right to sell on campus and solely through the cafeteria 50% of the canned and bottled beverages from alternate beverage vending contractors of their choice.

BID INFORMATION:

Bid Deadline: **11:30 AM, February 17, 2011**

Place of Bid Receipt: SOCCCD – Facilities Planning and Purchasing Department
Saddleback College
Third Floor, Health Sciences Building
28000 Marguerite Parkway
Mission Viejo, CA 92692-3635

Mailing Address: South Orange County Community College District
Attn: Purchasing
28000 Marguerite Parkway
Mission Viejo, CA 92692-3635

Sealed bids will be received up to the above-indicated time and date. Late bids will not be accepted and will be returned unopened. Proposals may be delivered in person, by U.S. mail, or courier services. Fax proposals are not acceptable. Proposals must be submitted in an envelope plainly marked with the bid number.
Proposals shall be binding upon the provider for 180 calendar days following the award recommendation date. All terms and specifications included in or appended to this solicitation apply to any subsequent award.

Number of Copies: Submit ten (10) copies of the proposal. Brochures and other promotional materials are not necessary unless you consider them to be the only way to convey your services.

The South Orange County Community College District is issuing this Request for Proposals on behalf of Irvine Valley College and is the single point of contact regarding all questions related to this RFP. All communications, including any requests for clarification concerning this RFP, shall be addressed no later than **February 10, 2011**, in writing, email or fax to:

Brandy K. D’Lena  
Email: bdlena@socccd.edu  
Phone: 949-582-4678  
Fax: 949-364-1731

Although the schedule is subject to change, the College intends to adhere to the following schedule:

- **PUBLISH (draft dates)...................**Wednesday, January 12 & 19, 2011  
- **PRE-BID CONFERENCE...............**Monday, January 24, 2011, 10:00 a.m.  
- **FINAL DAY FOR QUESTIONS.........**Thursday, February 10, 2011, 4:30  
- **PROPOSALS DUE/BID OPENING ......**Thursday, February 17, 2011, 11:30 a.m.  
- **FACILITIES VISITS .................**Early March  
- **COMMITTEE MEETING...............**Early March  
- **CONTRACT NEGOTIATIONS.........**Late March  
- **AWARD RECOMMENDATION..........**Friday, April 8, 2011  
- **BOARD APPROVAL...................**Monday, May 23, 2011  
- **FINALIZE CONTRACTS ..............**Tuesday, May 24, 2011  
- **START NEW CONTRACT..............**Friday, July 1, 2011

**IV. REQUIREMENTS FOR SUBMITTING A PROPOSAL**

A. Proposals should be as thorough and detailed as possible so that the College may properly evaluate the Vendor’s capability to provide the required services. The Vendor must clearly state in the proposal any exceptions to or deviations from the specifications or terms and conditions. Any costs incurred by the successful Vendor in the completion of any award issued on the basis of this proposal, but not explicitly stated in the Vendor’s response, shall not be payable. Vendors are required to submit the following items or information but are not limited solely to these items:

- Request for Proposals Form completed and signed by a person authorized to legally bind the person, partnership, company or corporation submitting the proposal. Proposal form must be made in the official name of the firm or individual under which business is conducted.
- Affidavit of Non-Collusion completed and signed.
• Five references including the duration and extent of experience in providing like services at similar locations.
• Response is required, in order, to the following:
  o Affidavit of Non-Collusion
  o Current Certificate of Insurance
  o Vendor shall describe, in detail, what is intended for beverage vending services at Campus.
  o 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.
  o Show in detail all capital improvements, or other programs or projects that Vendor proposes.
  o Provide a detailed description of the procedures and approaches intended to support the District’s goal of improving sustainable practices.
  o Provide list of all current clients.

B. As part of their proposals, beverage companies shall indicate in detail what promotional funds they are proposing to pay the District for the award of the exclusive carbonated soft drink rights at the Campus over the duration of the contract. Proposals shall also indicate the amounts to be paid for each year if the District elects to extend the contract.

**NOTE:** If proposal is based on proposed changes in current beverages vending prices or quantities of machines on campus, the changes should be clearly indicated in the proposals.

C. Proposals shall indicate in detail what other marketing programs and/or marketing promotion programs are being offered.

D. All material submitted in response to this RFP will become the property of South Orange County Community College District and will become public record after the evaluation process is completed and an award decision made. If the Vendor submits information in the RFP that is considered to be confidential per public contract code:

• the Vendor must clearly mark this material as confidential
• include a statement with its response justifying the confidentiality of the item
• District will not consider the prices submitted by the Vendor to be proprietary or confidential material.

V. **CONTRACTOR FURNISHED EQUIPMENT**

The beverage vending contractor shall furnish, at no cost to the District, all necessary equipment that will be required in the operation of the service. The Contractor shall retain ownership of all equipment furnished as part of this Agreement.

Contractor shall provide new or nearly new automated vending machines as described in the Agreement. All items shall be installed at the expense of beverage vending Contractor. Installation must be coordinated with IVC Facilities Department.
Describe and list all major equipment items that the Contractor will provide and install, at no cost to the District as part of the Agreement.

VI. **PARTIES TO THE CONTRACT**

The contract shall be between South Orange County Community College District and the Vendor.

VII. **PROPOSAL EVALUATION AND AWARD**

This is a request for proposals and not a bid process. Therefore, the District has the discretion to evaluate the qualitative as well as financial aspect of each proposal and make its selection based on what it considers to be in the best interest of the District as a whole. The District reserves the right to accept other than the most financially advantageous proposal. The District reserves the right to accept or reject any and all proposals, and to waive any informality in proposals. The recommended Vendor must be approved by the Board of Trustees before a contract can be entered into.

The District, after reviewing all proposals, may select a limited number of finalists that will be interviewed by a selection committee. Site visits of existing Vendor locations may be required. Further information, samples, and references may be requested at that time.

Attached are the agreements that each successful Vendor, as Contractor, will be required to execute. These agreements cover in detail the special conditions and requirements of the bid packages. Bidders should read these documents very carefully and, if they find any condition that is not acceptable or would like to negotiate, they should indicate so in their proposals. The District will evaluate changes proposed with bids and make a determination. If bidders fail to indicate proposed changes to the agreements in their bids, it shall be understood that they accept all the terms and conditions of the attached agreements. It is also expressly understood and agreed by all bidders that the District reserves the right to reject any proposed changes to the agreements.

VII. **COMPENSATION:**

The Contractors shall pay the college funds as directed by the District, a monthly commission payment or a percentage of coin vending machine sales (less sales tax) as appropriate. Contractors shall also guarantee a minimum annual commission that does not relate to annual sales. The monthly commission percentage and the minimum annual guaranteed commission may be negotiated at different percentages or amounts for each year of the contract period. Promotional funds and marketing agreements will be provided as determined during contract negotiations.

VIII. **TERM OF AGREEMENT:**

A. The terms of the agreements are specified in each of the attached agreements. All agreements will start on July 1, 2011.

B. The final version of the Agreement shall include any additional elements offered by the Vendor in the proposal and accepted by the District, as well as exhibits as mutually agreed upon.
IX. **PRE-PROPOSAL CONFERENCE:**

A mandatory pre-bid conference will be held on **Monday, January 24, 2011, at 10:00 a.m.**, in Room SC 260, Student Services Center, Irvine Valley College, at 5500 Irvine Center Drive, Irvine, CA 92681.

A map of the campus is enclosed. Parking is available in all lots with the purchase of a day parking permit which can be obtained at dispensers located at several campus locations. Interested Vendors must be in attendance, confirmed with a sign in sheet and roll call, from the beginning to the end of the conference to qualify for bidding on the beverage vending services.

X. **WITHDRAWAL OF PROPOSAL BY VENDOR**

Proposals may be withdrawn in writing and submitted via fax, mail or hand delivery from the Vendor prior to the bid deadline for receipt of proposals. No oral withdrawals will be accepted.
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AFFIDAVIT OF NON-COLLUSION

The prospective Contractor must sign the Affidavit and provide the information required of Contractors as outlined.

AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under the penalty of perjury:

1. That I am the Contractor, a partner, or an officer or employee of the responding corporation having authority to sign on its behalf;

2. That the attached proposal or proposals have been arrived at by the Contractor independently, and have been submitted without collusion with and without any agreement, understanding, or planned common course of action with any other Contractor or materials, supplies, equipment or services described in the Request for Proposal designed to limit independent offers or competition;

3. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

Subscribed and sworn to me this

______ of ________, ________

____________________________
Signature

Notary Public

____________________________
Firm Name

Expires

____________________________
Date
Request for Proposal
Bid Number 302

Beverage Supply/Promotional Agreement for Irvine Valley College

PROPOSAL FORM

Director of Facilities Planning and Purchasing
South Orange County Community College District
28000 Marguerite Parkway
Mission Viejo, CA 92629-3635

I compliance with this Request for Proposal, the undersigned acknowledges that I have read and understand all the conditions imposed herein and have received Addenda numbers ______________ __________ and agree to furnish the services in accordance with the attached proposal or as mutually agreed upon by subsequent negotiation.

Name of Firm: ____________________________________________

Address: ________________________________________________

City: ____________________________________________________

State & Zip: _____________________________________________

Telephone: ______________________________________________

Name: __________________________________________________

Signature: ______________________________________________

Title: ___________________________________________________

Date: ___________________________________________________
IRVINE VALLEY COLLEGE  BEVERAGE VENDING AGREEMENT

This Agreement is made effective as of July 1, 2011 (the “Effective Date”), by and between the SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, hereinafter called the "DISTRICT", and Vendor Name, address, phone hereinafter called "VENDOR", for Irvine Valley College campus having its principal place of business at 5500 Irvine Center Drive, Irvine, CA 92618.

RECIDALS

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 vending products to the Irvine Valley College.

WHEREAS, VENDOR has submitted a bid in response to an invitation to bid 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:

AGREEMENT

1.  Definitions

(a) “Agreement Year” means each twelve-month period beginning with the first day of the Term.

(b) “Beverage” or “Beverages” means all nonalcoholic beverages, carbonated soft drinks and all non carbonated nonalcoholic beverages, including, but not limited to, fruit juices, fruit juice-containing drinks, and fruit-flavored drinks (“Fruit Drinks”); hypertonic, isotonic, hypotonic drinks, and energy and fluid replacement drinks (“Sports Drinks”) and packaged waters. Milk, coffee and hot chocolate shall be specifically excluded from the definition of Beverages and will be made available through a separate vendor.

(c) “Campus” means 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 and the facilities located at the ATEP location. The Irvine Valley College Food Service location, specifically, the cafeteria located in the Student Services Building (the “Cafeteria”), is not included in the definition of Campus for the purposes of this contract.

(d) “Competitive Products” mean any and all Beverages other than Products (as defined herein).
(e) "Products" shall mean Beverage products 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.

(f) "College Year" means consecutive calendar days running from July 1 of a year through June 30 of the following year.

(g) "Team" or "Team(s)" means all interscholastic athletic teams associated with the Irvine Valley College.

(h) "College Marks" means the College's name, each team's name, colors and uniforms, and emblems and all trade names, trademarks, service marks, designs, logos, mascots, characters, identifications, symbols and other proprietary designs that are in existence on the effective date which are owned, licensed or otherwise controlled by the College.

(i) "Contract Documents": The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto: "Irvine Valley College Beverage Vending Agreement" and "Request for Proposal." In the case of conflict or inconsistencies, the order of precedence shall be "Irvine Valley College Beverage Vending Agreement" as priority one and "Request for Proposal" as priority two.

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, 2014 with two (2) one (1) year options for renewal under the same terms and conditions ("Term") unless sooner terminated as provided herein.

3. **Renewal**

Both parties understand that at the termination of a five (5) year term the DISTRICT is required to send out requests for bids. After a five year term there is no possibility for automatic renewal. The DISTRICT will send out the request for bids to interested parties at least thirty (30) days prior to the expiration of the Term.

4. **Exclusive Beverage Availability Rights**

The DISTRICT hereby grants to VENDOR the following Beverage availability rights:

(a) VENDOR shall have the exclusive right to make Beverages available for sale and distribution on Campus through beverage vending machines ("Vending Machines") and the right to provide all Beverages sold at booster club activities and all other special events not including athletic events conducted at any location on the Campus ("Special Events"). Subject to the terms and conditions set forth in this Agreement, the DISTRICT agrees that Products shall be the exclusive Beverages sold, dispensed or served or available on the Campus.

(b) VENDOR shall have the exclusive right to install Vending Machines throughout the Campus. After coordination and agreement with Irvine Valley College, VENDOR may have the 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 and per mutual agreement between VENDOR and Irvine Valley College. VENDOR shall install the Vending Machines at its sole expense including the addition of any necessary power and water connections as coordinated with respect to location of such installation of Vending Machines through Irvine Valley College.
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.

(c) VENDOR's bottle/can Products shall occupy fifty percent (50%) of the space allotted to bottle/can Beverages at the Cafeteria and VENDOR's fountain Products shall occupy one hundred percent (100%) of the space allotted to fountain Beverages at the Cafeteria.

5. **Pricing and Products**

(a) Vending products to be offered are certain Products as determined by VENDOR from time to time. The vend prices are listed in attached Exhibit B.

(b) Post mix and bottle and can pricing for Agreement Year One is listed in attached Exhibit A. Pricing is subject to change throughout the Term of this Agreement and shall be competitive with average market prices. VENDOR shall notify the DISTRICT’s representative in writing prior to the implementation of any price change.

6. **Marketing Rights**

a) The DISTRICT grants to VENDOR the following promotional rights, which are exclusive as to Beverages, to:

   i) Market and promote Beverages in connection with the Campus and the Teams including the use, subject to Section 4, 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.

   ii) 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.

   iii) 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.

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

b) The District grants to VENDOR the following exclusive merchandising rights:

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

   ii) 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.

   iii) Product trademarks will be prominently displayed on each Beverage vending machine on the Campus.
iv) 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.

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 herein nor will it prevent the on-campus consumption by students, faculty or their guests of Competitive Products purchased outside the Campus.

6. Consideration

In consideration of the exclusive rights granted in this Agreement, VENDOR shall pay to the DISTRICT the following:

(a) An annual sponsorship fee, payable annually commencing sixty (60) days from the signing of this Agreement by both parties and each anniversary date thereafter until the end of the Term of the Agreement, including those years where one year options are taken, in the amounts specified below not to exceed five (5) consecutive payments (the Annual Sponsorship Fee).

<table>
<thead>
<tr>
<th>Year</th>
<th>Payment Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>$25,000</td>
</tr>
<tr>
<td>Two</td>
<td>$25,000</td>
</tr>
<tr>
<td>Three</td>
<td>$25,000</td>
</tr>
<tr>
<td>Four</td>
<td>TBD</td>
</tr>
<tr>
<td>Five</td>
<td>TBD</td>
</tr>
</tbody>
</table>

(b) Commissions on cash collected (less sales taxes and applicable license and recycling fees “Commissions”) from all sales of Products through Vending Machines located on Campus during the Term which shall be calculated as follows:

(i) For all Products except Vendor shall identify any exceptions: (Cash collected x 40%) minus sales tax and CRV = Commission due. This Commission rate is contingent upon a minimum vend price of $Vendor to identify price.

(ii) For Excepted products noted above Products: (Cash collected x 30%) minus sales tax and CRV = Commission due. This Commission rate is contingent upon a minimum vend price of $Vendor to identify price.

(c) A growth payment per case as described in Exhibit B times the total number of cases sold in any one Agreement Year through Vending Machines.
At the request and instruction of DISTRICT, VENDOR agrees to pay the Sponsorship Fee and the Commissions to the designated Irvine Valley College account. Checks for such Commissions will be sent to the Irvine Valley College Associated Student Government (IVC ASG) every four (4) weeks, based upon the above percentages of actual cash collected from vending machines.

7. **Additional Consideration**

In addition to the consideration specified in Section 6 above, VENDOR shall provide the following further consideration to the DISTRICT.

(a) **VENDOR** will provide annual Product donations of up to a total of written number (XXX) XX oz. cases per Agreement Year upon written request of the Irvine Valley College, provided however, that Irvine Valley College will administer all requests through a central contact so that Irvine Valley College may prioritize the requests. Graduation is one of the occasions when this donation will be required.

(b) Within written number (XX) days from the signing of this Agreement by both parties and on each anniversary thereafter, **VENDOR** shall provide XX # of scholarships per year for Irvine Valley College students in the amount of written number & No/100 Dollars ($XXX.00) each. The scholarships recipients shall be as determined by the Irvine Valley College.

(c) Promotional materials to support campus special events in the amount of written number & No/100 Dollars ($XXXX.00) per year. Cash will not be paid in lieu of items. **VENDOR** shall meet with Irvine Valley College representatives to discuss marketing strategies and make decisions regarding these promotional materials.

(d) **XX Sideline Kits per year. VENDOR** shall make these kits available to Irvine Valley College before September 1 each year consisting of the following:

1. 10-10 gallon water jugs
2. 6-7 gallon water jugs
3. 2-5 gallon water jugs
4. 8-6 bottle water carriers
5. 130-32 ounce water bottles
6. 2,500/box-8 ounce water cups
7. 2-48 quart Ice Chest
Irvine Valley College Beverage Vending Agreement
December 18, 2010

(e) Vending Kits Promotions.

(f) XX appearances per year at the Campus of Promotional Sampling Vehicles or dates to be predetermined by Irvine Valley College and the VENDOR. It is anticipated that those dates will include a day during “Welcome Week” and “Senior Day”.

8. Competitive Products

During the entire Term of this Agreement:

(a) No Competitive Products shall be sampled, sold, served or dispensed anywhere on the Campus.

(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) With the exception of the current agreement with CCE which will expire on June 30, 2011, no agreement will be entered into or maintained by the DISTRICT pursuant to which Competitive Products will be associated with Irvine Valley College in any advertising or promotional activity that creates a relationship or connection between Competitive Products and the Irvine Valley College.

9. Equipment and Service

(a) VENDOR shall place vending machines (the “Equipment”) based upon current vending locations on the campus. VENDOR may develop a survey of the Campus needs and recommend alternatives to Irvine Valley College to consider. Any Equipment 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 Equipment. Irvine Valley College agrees that a minimum of fifteen (15) Vending Machines shall be placed on Campus throughout the Term.

(b) VENDOR shall provide a minimum of one debit/credit card per bank or location of vending machines. If this machine is determined repeatedly empty, another debit/credit card shall be provided at the bank where this situation occurs. The number of debit/credit card readers shall be determined by need.

(c) During the Term and at no cost to the DISTRICT, VENDOR will stock and service, if necessary, the Equipment and any additional Equipment determined by the parties to be installed at new locations on the Campus. VENDOR shall retain ownership in and title to all Equipment.

(d) The Equipment may not be removed from the Campus without VENDOR’s written consent, and the DISTRICT and Irvine Valley College agree 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. In the event that any Equipment is removed from DISTRICT premises, VENDOR shall return said premises to its original condition, excepting normal wear and tear, at VENDOR’s sole cost.

(e) VENDOR’s service of the Equipment will be provided during normal college hours, and 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. VENDOR shall be responsible for the repair and replacement of Equipment to the extent necessary as a result of theft and vandalism.

(f) VENDOR service vehicles are not permitted in most areas of the Campus. Routing must be pre-approved by College Campus Security prior to first site visit. Some locations may require alternate delivery, i.e. handcarts. Any truck caught violating the approved routing will be fined $100/occasion.

(g) VENDOR shall provide the Director of Student Development with $25 dollars in petty cash toward refunds for machine malfunction. This amount will be replenished at the request to the Director and on an as-needed basis. VENDOR will provide notice at each vending location to reclaim lost money at the cafeteria.

(h) Upon request, VENDOR shall provide one hour of local management level participation at the monthly Cafeteria Task Force meeting.

(i) VENDOR shall provide a quarterly business report which includes at a minimum: 1) information specific to the sale of Product through the Vending Machines including: volume, total sales minus cv, and a comparison with the previous quarter, 2) results of the independent audit performed quarterly and for the period leading up to the report.

(j) VENDOR agrees to maintain Vending Machines and to assure that Vending Machines are filled and without disrepair. VENDOR shall be responsible for Product quality control. The DISTRICT shall have the right to have replaced any and all Product in which a consumer may reject due to inferior Product quality or freshness. Under no circumstance will DISTRICT allow product which is passed its expiration date to be filled in Vending Machines. All expired Product will be replaced at no cost to the DISTRICT.

10. **Product Stocking**

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.

11. **Taxes**

VENDOR shall be responsible only for the payment of taxes on the sales of Products through vending machines located at the Campus. VENDOR is not responsible for taxes payable related to commission income. VENDOR shall not be assessed common area maintenance fees based on its occupation of the space allocated to the Equipment.
12. **Representations, Warranties and Covenants**

(a) Each party hereto represents and warrants to the other that:

   (i) it has full power and authority to enter into this Agreement and to grant and convey the rights set forth herein;

   (ii) all necessary approvals for its execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party;

   (iii) The signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and

   (iv) it has complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

(b) Each of the parties hereto agree that (i) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement and (ii) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

13. **Indemnification**

(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: (i) 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 and Irvine Valley College.

(c) The provisions of this Section 13 shall survive the termination of this Agreement.

14. **Breach of Contract and Termination**
(a) If any of the material terms of this Agreement, including but not limited to the exclusive rights to sell any one or more of the Products within the defined Campus area, are terminated, violated, prohibited, or limited during the Term of this Agreement for any reason, other than by action or inaction of VENDOR, or other than by way of final judicial opinion, imposition, or modification of any local, state or federal laws and/or regulations, ("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:

(1) (i) substitute other of its Products offered by VENDOR for the Products subject to such Affected Rights;

(ii) reduce VENDOR’s ongoing fees including Sponsorship Fees 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 14 (a) (2) (i) (ii) and 14 (b) below relative to the Products subject to such Affected Rights, as determined by VENDOR.

Or

(2) (i) terminate this Agreement in its entirely; and

(ii) then VENDOR shall, without prejudice to any other right or remedy available to VENDOR, obtain a reimbursement from the DISTRICT of any unearned Sponsorship Fee paid by VENDOR to the DISTRICT for the Agreement Year in which such termination occurs.

(b) 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 (30) day period, the DISTRICT may terminate the Agreement upon written notice to VENDOR and shall return any unearned and Sponsorship Fee already paid by VENDOR.

(c) 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:

(1) 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 (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)
Irvine Valley College Beverage Vending Agreement
December 18, 2010

(2)(A) of Title 11 of the United States Code, as amended, or any successor statute there to, 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 60 days thereafter); or

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

15. **Notices**

Any notices or other communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be deemed given when received.

If to **VENDOR:**

Name and Address here

Attn: ____________________________

If to the **DISTRICT**

South Orange County Community College District

28000 Marguerite Parkway

Mission Viejo, CA 92692

Attn: Vice Chancellor of Business Services

Copy to:

Irvine Valley College

5500 Irvine Center Drive

Irvine, CA 92618

Attn: Vice President/Student Services

16. **Relationship of Parties**

The **DISTRICT** and **VENDOR** are acting herein as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect.
17. Confidentiality

Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulations of the DISTRICT, and the DISTRICT and VENDOR agree not to disclose any non-public, confidential or proprietary information to any third party other than to their respective directors, officers, employees, agents and advisors, as needed.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

19. Insurance

(a) 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. 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 or have a blanket additional insured endorsement. Such insurance will contain a waiver of subrogation with respect to the additional insured’s.

(b) 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. VENDOR’s insurer 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.

20. Force Majeure

If the performance by either party hereto of its respective non-monetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party’s control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence (“Force Majeure Period”) without liability of any kind.

21. Entire Agreement

(a) This document is intended by the parties as the final and binding expression of their agreement and is a complete and exclusive statement of the terms thereof and supersedes all prior negotiations, representations, and
agreements and no representations, understandings, or agreements have been made or relied upon in the making of this Agreement.

(b) No modification or waiver of any of the terms and conditions of this Agreement shall be effective unless such modification or waiver is expressed in writing and signed by each of the parties.

22. **Assignment; Binding Nature; Waiver**

To the extent permitted by law, this Agreement shall be binding upon and inure to the benefit of VENDOR and the DISTRICT and their respective successors and permitted assigns. Neither party may subcontract or assign its rights or obligations under this Agreement to any other entity or person without the express written consent of the other, which consent may be withheld at its sole discretion. No waiver by any party of any default or non-performance shall be deemed a waiver of any subsequent default or non performance.

23. **Savings Clause**

If any provision of this Agreement shall be deemed or declared unenforceable, invalid or void, the same shall not impair any of the other provisions contained herein which shall continue to be enforceable in accordance with their respective terms, except that this clause shall not deprive any party of any remedy afforded under this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first above written.

**VENDOR**

South Orange County Community College District

By: ________________________________          By: ________________________________

Name: ________________________________

Title: Vice Chancellor of Business Services

Date: ________________________________

Tax Payer ID __________________________
EXHIBIT A

AGREEMENT YEAR ONE PRICING

<table>
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<tr>
<th>Product</th>
<th>Price Per Standard Physical Case</th>
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The prices set forth above may automatically increase by X% on the anniversary of the Effective Date during each Agreement Year. VENDOR shall have the right to increase prices by more than x% in the event of a substantial increase in the cost of a material component of VENDOR’s cost of goods, manufacture or delivery. In the event VENDOR increases prices by more than x%, VENDOR will provide notice to DISTRICT in writing.
EXHIBIT B

Vend Prices and Commissions

Vend Prices and Commissions for Agreement Years One through Three

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<th>Agreement Years 1-2</th>
<th>Vend Rate</th>
<th>Commission Rate</th>
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Vend Prices and Commissions for Agreement Years Four through Five

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