

# **REQUEST FOR PROPOSALS NO. 15-001**

**Request for Qualifications**

**And**

**Fee Proposal For**

**Beverage and Snack Vending Machines and  
Related Recycling Services**

**Gavilan Joint Community College District**

**Gavilan Joint Community College  
5055 Santa Teresa Boulevard  
Gilroy, CA 95020**

Contact: Frederick E. Harris  
Vice President of Administrative Services  
Telephone: (408) 848-4715  
FAX: 925-226-4043

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RFP #15-001

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**GAVILAN JOINT COMMUNITY COLLEGE DISTRICT  
REQUEST FOR QUALIFICATIONS AND FEE PROPOSALS (“RFP”) #15-001  
BEVERAGE AND SNACK VENDING MACHINES AND RELATED RECYCLING SERVICES**

**A. GENERAL INFORMATION**

The Gavilan Joint Community College District (“District”) invites qualified operators to submit written proposals for management and operation of beverage and snack vending machines and related recycling services. The requirements for submission of a response to this RFP, criteria to be considered by the District in award of a contract for the management and operations of beverage, snack, and related recycling services and the form of contract between the District and the operator are set forth in this RFP.

1. **Purpose of RFP.** This RFP is a part of the process for the District’s selection and retention of a qualified vending machine operator to manage and operate beverage and snack vending machines and related recycling services for Gavilan Joint Community College District. Timely submitted RFP Responses will be evaluated by a selection committee to ascertain the Respondents’ respective qualifications, based on the criteria established in this RFP. Following the selection committee’s determination of which Respondents meet or exceed the qualifications standards set forth in this RFP, in the sole and exclusive discretion of the selection committee, Respondents deemed qualified will be requested to participate in an interview with the Selection Committee as part of the process for selection and retention of a Food Service firm.
2. **RFP Activities; Timeline.** The following is a description of the principal activities to be completed under this RFP and the timeline for completion of each activity. The following notwithstanding, the District expressly reserves the right to amend the extent, nature or scope of RFP activities and/or the timeline for commencing/completing RFP activities.

March 23, 2015	Mandatory Pre-RFP Response meeting at the campus Student Center Building, South Lounge at 9:00 A.M.
April 6, 2015	Last day for submittal of questions by email, no later than 3:00 P.M.
April 13, 2015	Responses to submitted questions faxed or emailed by 4:00 P.M.
April 20, 2015	Last day for submittal of RFP Responses submitted, no later than 12:00 Noon.
April 27, 2015	Interviews of one or more of the Vending Machine Firms as determined by the Selection Committee.
May 12, 2015 (no later than)	Action of District Board of Trustees to Consider award of Contract.

3. **Date, Time and Location for Submission of RFP Response.** Proposals must be submitted no later than 12:00 Noon. on April 20, 2015 to:

Frederick E. Harris  
Vice President, Administrative Services  
5055 Santa Teresa Boulevard  
Gilroy, California 95020

RFP Responses which are not actually received in the office of the District's Vice President of Administrative Services at or prior to the latest date/time for submission of RFP Responses will be rejected by the District for non-responsiveness. Respondents are solely responsible for the timely submission of RFP Responses. Respondents are advised that the District utilizes a centralized mailroom for the receipt of items transmitted by United States Mail and private courier services, including FedEx, California Overnight, DHL, etc. Items received in the centralized mailroom will be distributed to the intended recipients only as part of the mailroom's daily delivery routine. A response to this RFP which is received in the District's central mailroom will not be deemed received by the office of the District's Vice President of Administrative Services until delivery of such item is effectuated to the office of the District's Vice President of Administrative Services. Accordingly, Respondents are encouraged to personally delivery RFP Responses directly to the office of the District's Vice President of Administrative Services or to retain a private service to personally deliver RFP Responses to the Office of the District's Vice President of Administrative Services.

4. **District Modifications to RFP.** The District expressly reserves the right to modify any portion of this RFP prior to the latest date/time for submission of RFP Responses, including without limitation, the cancellation of this RFP. Modifications, if any, made by the District to the RFP will be in writing; potential Respondents who have obtained this RFP from the District prior to any such modifications will be issued modifications to the RFP by written addenda.
5. **No Oral Clarifications/Modifications.** The District will not provide any oral clarifications or modifications to the RFP or the requirements hereof; no employee, officer, agent or representative of the District is authorized to provide oral clarifications or modifications to the RFP. No Respondent shall rely on any oral clarification or modification to the RFP.
6. **Respondent Questions.** Respondents' questions relating to the RFP, requirements of the RFP or clarifications will be considered and responded to by the District only if: (a) submitted in writing to the District; and (b) the inquiry is actually received not less than five (5) days prior to the last date/time for submission of RFP Responses. Inquiries must be submitted to the District Representative by writing, fax or email. The District will issue written responses to properly submitted Respondent inquiries without identifying the respondent submitting the inquiry.
7. **Errors/Discrepancies/Clarifications to RFP.** If a Respondent encounters errors or discrepancies in this RFP or portions hereof, the Respondent shall immediately notify Frederick E. Harris, Vice President, Administrative Services, fax: 925-226-4043, email: fharris@gavilan.edu of such error or discrepancy. Any Respondent seeking clarification of any portion of this RFP shall submit the requested clarification in writing to Frederick E. Harris. Responses of the District to any requested clarification will be in writing; if in the sole judgment of the District, any clarification response affects the RFP or other Respondents, the District will issue the clarification response by a written addendum distributed to all potential Respondents who have theretofore obtained this RFP from the

District. All requests for clarification of this RFP must be submitted and actually received by Frederick E. Harris no later than 3:00 P.M., April 6, 2015. The District will not respond to clarification requests submitted thereafter.

8. **Withdrawal of Response/Proposal.** Prior to the closing date and time set forth herein for submission of RFP Responses, any Respondent submitting a Response may withdraw the same by written request to the District Representative. After the closing date and time for submission of Responses to this RFP, no Respondent may withdraw its Response for a period of sixty (60) days after the opening of Bid Proposals. During this time, all Respondents shall guarantee the prices and price proposals quoted in their respective RFP Responses/Proposals.
  
9. **Public Records.** Except for materials relating to a Respondent's Financial Statement, materials deemed Trade Secrets (as defined in California Civil Code §3426.1) and materials specifically marked "Confidential" or "Proprietary," all materials submitted in response to this RFP are deemed property of the District. Upon conclusion of negotiations between the District and Respondents, RFP Responses shall be deemed to be public records. The foregoing notwithstanding, the District may reject for non-responsiveness the RFP Response of a Respondent who indiscriminately notes that its RFP Response or portions thereof are "Trade Secret," "Confidential" or "Proprietary" and exempt from disclosure as a public record. The District is not liable or responsible for the disclosure of RFP Responses, or portions thereof, deemed to be public records, if disclosure is by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its agents or representatives. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a RFP Response deemed exempt from disclosure hereunder, by submitting a response to this RFP, each Respondent agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys' fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense of the District in any action or proceeding seeking to compel disclosure of such materials; the District's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

## **B. The District and Goods and Services Required**

1. **The District.** Gavilan College was originally established in 1919 as San Benito County Junior College. It operated under this title until 1963, when a new community college district was drawn that included both San Benito and southern Santa Clara Counties. Successful passage of a local bond in 1966 provided the needed funds to construct the present campus at Santa Teresa Boulevard in Gilroy. The Gavilan Joint Community College District is comprised of 2,700 square miles encompassing southern Santa Clara and most of San Benito County and enrolls approximately 6,000 students. Gavilan College also has one site two in Hollister at the Briggs Building and one at the Morgan Hill as a wing of the Morgan Hill Community and Cultural Center. These two sites are an integral part of the District's effort to enhance student access to a college education.

Gavilan College is also preparing for the students of the future with permanent locations in Coyote Valley and San Benito County.

## 2. Goods and Services

The Vending Machine and related Recycling Services firm selected through this RFP will enter into a five (5) year agreement with the District to provide food/beverage services and will be solely responsible for the operation and management of the beverage and snack vending machines and related recycling services located on the Gavilan College main campus in Gilroy, the District's off-campus sites located in Hollister at the Briggs Building, future locations in San Martin and Coyote Valley to be opened in 2016, and its off-campus sites located in Morgan Hill as a wing of the Morgan Hill Community and Cultural Center. Respondents shall propose Vending Machine and related Recycling Services at all of the on-campus and off-campus site facilities. Each Vendor shall state in its proposal: 1) each facility at which Vending Machine Services would be provided; 2) the location(s) within each such facility where Vending Machine Services would be provided; 3) the number of vending machines to be provided at each such location as part of Vending Machine Services; 4) the types of beverages and food provided as part of Vending Machine Services at each location.

If a Vendor currently provides vending machine goods and/or services to the District, such Vendor should set forth in its proposal: 1) each facility at which such services are currently provided; 2) the location(s) within each such facility where such services are currently provided; 3) the number of vending machines currently provided at each such location; 4) the types of beverages and food currently provided at each such location; 5) what changes, if any, such Vendor proposes to make as to the vending machine goods and/or services currently provided.

Each Vendor shall attend the MANDATORY Pre-RFP set forth above in Paragraph no. 2 and participate in the onsite inspection of facilities to determine the appropriate locations for placement of Respondent's Vending Machine Services.

**Please review the attached Agreement which sets forth in detail the basic services required, together with the rights and obligations of both the Respondent firm and the District. A copy of the Agreement is attached hereto as Exhibit 3.**

All Respondents are further advised that the District has an existing contract with an independent cafeteria operator to operate the Gavilan College Cafeteria. Under the terms of the contract between the District and the cafeteria operator, there is an express obligation of the cafeteria operator to limit sales of beverages to the beverages produced or distributed by a major beverage producer/distributor. Excluded from this limitation are specialty drinks such as fruit juices. Although the cafeteria operator's offerings of beverages will be limited as noted above, the cafeteria operator is not obligated to purchase beverage products for sale as a fountain drink or a canned drink from the Operator awarded the Contract through the RFP. So long as the beverage offerings of the cafeteria operator are limited as noted above, the cafeteria operator may purchase beverage or beverage components from the Operator awarded the Contract or any other source, in the sole discretion of the cafeteria operator. The Agreement

between the District and the successful Respondent on this RFP will reflect the exclusion of fruit juice and dairy products from the Respondent's exclusive beverage rights.

### C. RFP RESPONSE CONTENTS

1. **RFP Response.** Respondents are solely responsible for the timely submission of responses to this RFP which conform to the material requirements hereof. All materials submitted in response to this RFP shall be on 8 ½" x 11" paper, preferably in portrait orientation. Each individual or firm or joint venture (Respondent) submitting a proposal shall submit an original proposal plus five (5) copies of said proposal in a sealed envelope identifying the Respondent and prominently marked in bold print "RFP NO. 15-001, BEVERAGE AND SNACK VENDING MACHINES AND RELATED RECYCLING SERVICES." Responses to this RFP which are not timely submitted or which are not responsive to material requirements of this RFP or which are submitted by a non-responsible Respondent will be rejected by the District. Responses by facsimile (FAX) or e-mail will be rejected for non-responsiveness.
2. **Additional Materials.** Respondents are not prohibited, but are discouraged, from submitting materials in addition to those specifically responding to the matters noted herein. If a Respondent elects to submit materials with its RFP Response which are in addition to the matters described herein, the Respondent shall separately bind all such additional materials from the RFP Response addressing the matters set forth herein
3. **RFP Response Format/Contents.** Each RFP Response must conform to the following described format and must include the content described below. Failure of a Respondent to submit its RFP Response in a format and with content conforming to the following requirements will be a basis for the District's rejection of such RFP Response for non-responsiveness. Proposals shall be signed by an authorized individual or officer of the Respondent submitting the proposal. The sole responsibility for compliance with the requirements of this RFP lies with each Respondent submitting a response.
4. **RFP Response Costs.** All costs and expenses incurred by a Respondent to prepare and submit a response to this RFP and all other related activities shall be borne solely and exclusively by the Respondent.
5. **RFP Response Format.** Each RFP Response shall include the following items, in the order noted below:

**Proposal [Cover Sheet].** Complete all information requested in the Proposal Cover Sheet, attached hereto as Exhibit 1. The Proposal Cover Sheet must be executed by a person duly and fully authorized on behalf of Respondent to execute the Proposal Cover Sheet and Agreement, if awarded to Respondent, and to bind the Respondent to each and every term, condition and covenant of the RFP.

**Letter of Interest.** Include a brief letter, signed by the Respondent's authorized representative, expressing the interest of the Respondent in providing vending

machine and related recycling services and a brief statement of the qualifications of the Respondent to provide the requested vending machine and related recycling services. Provide contact information, including the telephone number, fax number and email address for the personnel of the Respondent who will be receiving notices and other communications from the District regarding the RFP. The letter of interest should be bound with other materials responding to this RFP.

**Table of Contents.** Include a Table of Contents reflecting the Respondent's responses to each of the items set forth below.

**Tab 1: Statement of Qualifications.** Complete and execute the Statement of Qualifications attached as Exhibit 2 to this RFP for the Respondent. If the District determines that the response to any question set forth in the Statement of Qualifications is false, misleading or omits material facts rendering the response to be false or misleading the RFP Response of the Respondents submitting such a Statement of Qualifications is subject to rejection for non-responsiveness.

**Tab 2: Proposed Management and Operation.** Provide a detailed description of Respondent's proposed management and operation which details the method and manner in which Respondent proposes to meet the requirements of the Agreement, including specific discussions of management/operation of the Gavilan College Beverage and Snack Vending Machines and Related Recycling Services. Third party outsourcing for the beverage portion of the contract will not be permitted. (Respondents are encouraged, consistent with the general scope of this RFP, to propose alternative or different services or different means of achieving the services and objectives described in this RFP and in the Agreement.)

**Tab 3: Relevant Experience.** Provide additional details of your relevant experience identified in the Statement of Qualifications which reflect the skills, experience and other qualifications of the Respondent to successfully operate and manage a Community College Cafeteria. This section of the RFP Response shall not exceed fifteen (5) pages.

**Tab 4: Proposed Management Team.** Identify the key members of the Respondents' staff that will be assigned to Management positions overseeing any and all aspects of the beverage and snack vending machine services, including administrative functions, both on-site and off-site. For each member of the Respondents' organization that will be assigned to Management positions provide brief descriptions of each member's relevant qualifications and background. In addition, provide a current resume for each member of the Respondent's Proposed Management Team. The resumes must include descriptions of recent (within the past three (3) years) management experience of each of the Respondent's proposed managers.

**Tab 5: Financial Statement.** Include a current financial statement for the Respondent. Financial Statements must be reviewed, compiled or audited by a licensed Certified Public Accountant.



**Tab 6: Insurance Certificates.** Provide copies of Certificates of Insurance for each policy of insurance set forth below, and upon award of the RFP place Gavilan Joint Community College District as an additional insured on each policy.

Required Insurance Policy Certificate	Minimum Coverage Amount
Workers Compensation	In accordance with law
Employers Liability	One Million Dollars (\$1,000,000)
Comprehensive General Liability (including property damage and automobile liability)	One Million Dollars (\$1,000,000) per occurrence/ Two Million Dollars (\$2,000,000) aggregate

**Tab 7: Price Proposal.** Respondent's Response to this RFP must include a price proposal for the goods and services proposed. The form and format of each Respondent's price proposal is in the discretion of the Respondent. Respondents are encouraged to include in their proposals information relating to cost of vending machines, commissions, revenue to the District, maintenance issues, choices of suppliers for contents of machines, delivery of food and beverages, prices for food and beverages, liability for damage to machines, and collection of revenue.

**Tab 8: District Programs and Activities.** In addition to a price proposal, each Respondent should state what payments Respondent would be willing to make annually to the District to support District programs and activities as an additional obligation under Respondent's contract with the District for Vending Machine Services.

**Tab 9: Comments and/or Proposed Modifications to Agreement.** The Agreement to be executed by the Respondent awarded this contract is attached hereto as Exhibit 3. Respondents must thoroughly review the Agreement included herewith and must, in their respective RFP responses, identify any term or condition of the Agreement which the Respondent requests modification, by amendment to existing provisions, addition of additional provisions or deletion of existing provisions. Where any requested modification consists of amendments to existing provisions or additional provisions, the response to this RFP must set forth the text of the requested amendment or addition. Respondent's identification, modification or objection to any existing term, condition or provision in the Agreement shall not result in an automatic modification of the Agreement. The District will not, however, consider or negotiate the modification of any term or condition not identified in Respondent's RFP. Any Respondent who's RFP Response does not identify specific modifications to terms or conditions of the attached Agreement will be deemed to have agreed to and accepted all terms and conditions of the Agreement.

#### A. SELECTION CRITERIA

1. **General.** Timely submitted RFP Responses will be independently reviewed by each member of the Selection Committee. A Response to the RFP which does not comply with the requirements of this RFP will be subject to rejection for non-

responsiveness. All materials submitted in response to this RFP shall become the property of the District and shall be considered a part of the public record.

2. **Qualifications of Respondents.** It is the District's intention to award a contract to a Respondent who furnishes satisfactory evidence that the Respondent has the requisite experience, ability, financial and material resources to enable the Respondent to operate and manage the District Cafeteria successfully and properly in accordance with the terms of the Agreement.
3. **Evaluation Criteria.** The following sets forth the criteria by which each RFP Response will be evaluated. The District and the selection committee reserve the right to exercise discretion in the weight and priority of the evaluation criteria.

**Relevant Experience, Ability and Financial Wherewithal.** The Respondent will be evaluated based on all relevant experience and ability, including prior experience providing beverage and snack vending machines and related recycling services for private and/or public facilities similar in size, scope, and operation as the District subject to this RFP. In addition, the District will evaluate Respondent's financial statements to ensure Respondent has the financial wherewithal to operate and maintain the vending machine and related recycling services for the term of the Agreement.

**Responsiveness to RFP; Client Responsiveness.** The District will evaluate the Respondent's RFP Response for responsiveness to the requirements of this RFP. The District will also evaluate the prior experience and success of the Respondent to establish effective working relationships within the setting of a higher education institution, including the relationships with management, administration, and clients based, in part, on comments and recommendation from prior clients and references.

**Menus and Pricing.** The District will evaluate the Respondents' proposed menus, including, without limitation, the selection and variety of menu items and pricing that will be included in Beverage and Snack Vending Machines Related Recycling Services RFP.

**Price Proposal.** Respondent offering is the most advantageous income package to the District, inclusive of the annual payment, revenue percentage, ASB contributions and District Scholarship Fund. The District expressly reserves its right to evaluate proposals without regard to price and to award the Beverage and Snack Vending Machines and Related Recycling Services Agreement to a Respondent who does not submit the highest price proposal.

4. **Post-Response Opening Inquiries.** After the District has opened timely submitted responses to this RFP, the District reserves the right to engage in further inquiry regarding a Respondent's response to the RFP, a Respondent's qualifications or any other matter relating to a Respondent's response to this RFP. The District's inquiries may be in writing or verbally. The failure of any Respondent to timely, completely and accurately respond to any such District inquiry will result in rejection of the Respondent's response to this RFP for non-responsiveness. The District reserves the right to engage in negotiations with Respondents timely submitting responsive Proposals to this RFP for the purpose

of refining the nature and types of products to be offered, pricing structures for products and matters relating to commission rates, annual payments and/or annual contributions.

5. **Best and Final Offer.** The District reserves the right to request that Respondents timely submitting a RFP Response submit a Best and Final Offer. The RFP Response of a Respondent who fails to submit a Best and Final Offer in the form and format directed by the District within the time requested by the District will be rejected for non-responsiveness.
6. **Interviews.** Respondents deemed qualified for the Projects by the Selection Committee are required to participate in an interview with the Selection Committee. Interviews, if conducted by the selection committee, will generally consist of no more than fifteen (15) minutes for Respondents' presentation, followed by questions posed by the Selection Committee. Total time of each interview will not exceed one (1) hour. If requested by the Selection Committee, any Respondent invited to participate in the interview process shall have present at the interview its key personnel identified in the Respondent's RFP Response.

## B. AWARD OF CONTRACT

1. **Basis of Award.** Any contract resulting from this RFP will be awarded to the firm whose RFP Response contains the combination of qualifications and cost that offer the District the best overall value.
2. **Award of Contract(s).** Upon completing interviews of project inspector firms by the Selection Committee, the Selection Committee will make recommendations to the District's Board of Trustees for the award of one (1) Beverage and Snack Vending and Related Recycling Services Agreement. The Board of Trustees of the District reserves the right to accept or reject any or all proposals, to negotiate with any or all responsible Respondents submitting proposals, and to waive any informality in the RFP. In addition, the District reserves the right to interview the employees of Respondent. Notwithstanding any recommendations of the Selection Committee, action to award the Beverage and Snack Vending and Related Recycling Services Agreement is vested solely in the District's Board of Trustees. The Agreement, if awarded, will be by action of the District's Board of Trustees, and such Agreement shall become enforceable and binding upon Respondent as of the date the District's Board of Trustees takes action to award the contract, rather than on the date the contract is executed by the District and/or Respondent.
3. **Revisions to Agreement After Award.** Any and all revisions, deletions, additions and/or modifications to the Beverage and Snack Vending and Related Recycling Services Agreement approved and accepted by the District subsequent to the Board of Trustees' Award of Contract shall not in any way affect, alter or modify either the date the Beverage and Snack Vending and Related Recycling Services Agreement became enforceable and binding or the obligations of the Agreement made; thus, the Agreement cannot be impaired at the option of one of the contracting parties.

**Exhibit 1**

**PROPOSAL [COVER SHEET]  
GAVILAN JOINT COMMUNITY COLLEGE DISTRICT  
REQUEST FOR QUALIFICATIONS AND FEE PROPOSALS ("RFP") #15-001  
BEVERAGES, SNACK, AND RECYCLING SERVICES OPERATION AGREEMENT**

**(TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH RFP RESPONSE)**

Respondent's Name	
Respondent's Address	
Respondent's Telephone/Fax Numbers	
Name of Respondent's Contact	
Respondent's Contact Email Address	

The above-identified Respondent proposes the following in response to the District's Request for Proposals for Beverage and Snack Vending and Related Recycling Services Agreement.

1. Initial Sponsorship Payment to District: \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (see Paragraph 4.1 of Agreement).
2. Annual Payments to District: \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (see Paragraph 4.2 of Agreement).
3. Percentage of Revenue Payments (see Paragraph 4.3 of Agreement):
  - a. Beverage Vending Machine Percentage of Gross Sales Paid to District: \_\_\_\_\_ percent (\_\_\_ %).
  - b. Snack Vending Machine Percentage of Gross Sales Paid to District: \_\_\_\_\_ percent (\_\_\_ %).
  - c. Percentage of Recycling Gross Receipts Paid to District \_\_\_\_\_ percent (\_\_\_ %).
4. Fair Market Value of Annual Contributions of Goods/Merchandise: \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (see Paragraph 4.4 of Agreement).
5. Additional Annual Contributions to District Programs and Activities: \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (see paragraph 4.5 of Agreement).

Service Location Chart:

<b>Gavilan College Main Campus</b>	Equipment/Services Provided  <b>X</b> Yes    _____    No
Service Locations	<u>Gym Lobby:</u> (3) Beverage machines (1) Snack  <u>Student Center Closet:</u> (4) Beverage (1) Coffee (2) Snack  <u>Portable Buildings:</u> (2) Beverage (one is dedicated water only)
<b>Hollister Offsite</b>	Equipment/Services Provided  <b>X</b> Yes    _____    No
Service Locations	<u>Lobby:</u> (2) Beverage (1) Snack
<b>Morgan Hill Offsite</b>	Equipment/Services Provided  <b>X</b> Yes    _____    No
Service Locations	<u>Lobby:</u> (1) Beverage (1) Snack

In submitting this Proposal, the Respondent acknowledges that it has reviewed the Request for Proposals, understands the nature and scope of obligations to be performed by the Respondent if awarded the Contract, confirms that it has the capacity and capability to fully and timely perform obligations under the Contract if awarded to the Respondent, and if awarded, Respondent will execute and deliver to the District the Agreement for Beverage and Snack Vending and Related Recycling Services in the form attached to the RFP as Exhibit 3 within five (5) days after notification of award of the Contract.

Respondent further acknowledges and understands that its identification, modification or objection to any existing term, condition or provision in the Agreement shall not result in an automatic modification of the Agreement. The District will not, however, consider or negotiate the modification of any term or condition not identified in Respondent's RFP. Any Respondent whose RFP Response does not identify modifications to terms or conditions of the attached Beverage and Snack Vending and Related Recycling Services Agreement will be deemed to have agreed to all terms and conditions set forth therein.

The undersigned is duly authorized to execute this Proposal on behalf of the Respondent.

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

\_\_\_\_\_  
(Handwritten or typewritten name)

\_\_\_\_\_  
(Title)

### NON-COLLUSION AFFIDAVIT

(TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH RFP RESPONSE)

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn, deposes and says that I  
(Typed or Printed Name)  
am the \_\_\_\_\_ of \_\_\_\_\_, the party  
(Title) (Respondent Name)  
submitting the foregoing RFP Proposal (the "Respondent"). In connection with the foregoing  
Bid Proposal, the undersigned declares, states and certifies that:

1. The RFP Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The RFP Proposal is genuine and not collusive or sham
3. The Respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other respondent or anyone else to put in sham bid, or to refrain from submitted a proposal.
4. The Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price, or that of any other respondent, or to fix any overhead, profit or cost element of the bid price or that of any other respondent, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the RFP Proposal and related documents are true.
6. The Respondent has not, directly or indirectly, submitted the proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository. or to any member or agent thereof to effectuate a collusive or sham proposal.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_.  
(City and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(City and State)  
(\_\_\_\_\_)\_\_\_\_\_  
(Area Code and Telephone Number)

**Exhibit 2**  
**GAVILAN JOINT COMMUNITY COLLEGE DISTRICT**  
**STATEMENT OF QUALIFICATIONS**  
**BEVERAGE AND SNACK VENDING MACHINES AND**  
**RELATED RECYCLING SERVICES**

The Statement of Qualification consists of the following:

- Statement of Experience; and
- Financial Statement.

Please mark the envelope “Confidential.”

Insurance.

The contractor must provide at least an aggregate of \$2,000,000 in Comprehensive General Liability Insurance. The contractor’s insurance company must be authorized to do business in the State of California. The carrier must have an “A-” or better rating by A.M. Best, Moody’s, or Standard and Poor’s.

Confidentiality.

The completed Statements of Qualification submitted by organizations are not public records and are not open to public inspection. All information provided will be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification, or investigation of substantial allegations, or in the appeal hearing. State law requires, however, that the names of organizations submitting a Response to the Request for Proposal shall be subject to disclosure.

Waiver of Irregularities.

The District reserves the right to waive minor irregularities and omissions in the information contained in the Statement of Qualification submitted, to make all final determinations, and to determine at any time that the prequalification procedures will not be applied to a specific future public works project.

**STATEMENT OF EXPERIENCE**

Name of Firm \_\_\_\_\_

Business Address \_\_\_\_\_  
 (P.O. Box unacceptable)

Mailing Address \_\_\_\_\_  
 (If different)

Telephone No. ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_ Tax I.D. No.: \_\_\_\_\_

Date Business Formed: \_\_\_\_\_/Date Incorporated:

Type of Firm (Check one): \_\_\_ Corporation; \_\_\_ Sole Proprietorship; \_\_\_ Partnership; \_\_\_\_\_ Other (specify)

If a Partnership, state whether partnership is general, limited or association: \_\_\_\_\_

Has there been any recent change in control of company? YES \_ NO  
 If yes, explain on separate signed page.

Is the company or its owners connected with other companies as a subsidiary, parent, holding or affiliate?  
 YES \_ NO \_ If yes, explain on separate signed page.

**CORPORATE OFFICERS - PARTNERS - PROPRIETOR - OWNERS**

Name	Years With Firm	Position	% of Owner-Ship	Social Security Number
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Current number and prior five-year average number of staff employed by Respondent:

	Current	Prior 5-year average
Management Staff	_____	_____
Administrative Staff	_____	_____
On-Site Service Personnel	_____	_____

**EXPERIENCE RECORD OF STAFF TO BE ASSIGNED TO PROJECT**

Name	Position with Firm	Time With Firm
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

1. Disclose any known family and/or business relationship with any current member of the District's Board of Trustees, and/or any other officer, agent, representative, staff member and/or employee of the Gavilan Community College District.



2. Number of years your organization has been in business providing vending machine and related recycling services: \_\_\_\_\_
3. Number of years your organization has been in business providing vending machine and related recycling services for public entities \_\_\_\_\_
4. Number of years your organization has conducted business under its present name:  
\_\_\_\_\_
5. If your organization has conducted business under a name or name style different than your organization's present name, identify all prior name(s) or name style(s):  
\_\_\_\_\_  
\_\_\_\_\_
6. Organization Background/History: Attach a summary of your organization's background/ history and state why your organization is qualified to provide the services described in the RFP. **Limit response to 2 pages.**
7. Experience: Provide a separate addendum identifying the organizations/public entities with whom your organization has contracted with to provide vending machine and related recycling services including, without limitation, the name, address and contact information for each entity, the length of time your organization provided vending machine and related recycling services, and a brief description of the vending machine and related recycling services provided. **Limit response to 2 pages.**
8. Within the past five (5) years, have any lawsuits or other administrative, legal, arbitration or other proceedings, ever been brought or commenced against your organization or any of its principals, officers or equity owners in connection with any beverage and/or snack vending machines contract?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.
9. Within the past five (5) years, has your organization ever filed a lawsuit or commenced other administrative, legal or other proceedings in connection with any beverage and/or snack machine contract?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.
10. Are there currently any judgments, orders, decrees or arbitration awards pending or outstanding against your organization or any of the officers, directors, employees or principals of your organization?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
If so, describe each such judgment, order, decree or arbitration award and the present status of the satisfaction or discharge thereof.
11. Has your organization ever refused to sign a vending machine and related recycling services contract awarded to it?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your refusal to sign such contract.

12. Has your organization ever failed to complete a services contract?  
 Yes  No  
 If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your failure to complete such contract.
13. Has your organization ever been declared in default of a services contract?  
 Yes  No  
 If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of each such declaration of default.
14. Has any services contract to which your organization is a party been terminated for the convenience of the owner?  
 Yes  No  
 If so, identify the project and project owner along with a description of the circumstances under which the convenience termination occurred.
15. Has your organization or any predecessor to your organization been charged with a violation of the California False Claims Act or similar federal statute within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) a detailed description of the circumstances upon which charges were based; (ii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iii) disposition of such charges.
16. Has any individual or entity who owns ten percent (10%) or more of the equity interest of your organization been an equity owner of ten percent (10%) or more of the equity interest of any other entity or organization, within the past ten (10) years, which has been charged with a violation of the California False Claims Act or similar federal statute within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) the name(s) of each such other entity or organization; (ii) a detailed description of the circumstances upon which charges were based; (iii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iv) disposition of such charges.
17. Has any individual or entity who owns ten percent (10%) or more of the equity interest of your organization been charged with a violation of the California False Claims Act or similar federal statute within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) the name of such individual(s) or entity(ies); (ii) a detailed description of the circumstances upon which charges were based; (iii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iv) disposition of such charges.
18. Has your organization or any predecessor to your organization been subject to any investigation and/or charged with any violation of any California or federal civil or criminal statutes within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) a detailed description of the circumstances upon which charges were based; (ii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iii) disposition of such charges.

19. Has any individual or entity who owns ten percent (10%) or more of the equity interest of your organization been an equity owner of ten percent (10%) or more of the equity interest of any other entity or organization, within the past ten (10) years, been subject to any investigation and/or charged with any violation of any California or federal civil or criminal statutes within the past ten (10) years?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, on a separate attachment, provide the following: (i) the name(s) of each such other entity or organization; (ii) a detailed description of the circumstances upon which charges were based; (iii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iv) disposition of such charges.

20. Has any individual or entity who owns ten percent (10%) or more of the equity interest of your organization been subject to any investigation and/or charged with any violation of any California or federal civil or criminal statutes within the past ten (10) years?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, on a separate attachment, provide the following: (i) the name of such individual(s) or entity(ies); (ii) a detailed description of the circumstances upon which charges were based; (iii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iv) disposition of such charges.

21. References (public education institutions or similar, preferably other California Community College Districts or K-12 School Districts). For each reference, provide telephone/fax/email of the principal contact individual.

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

22. List annual gross income for last 3 years:

\$ \_\_\_\_\_ year \_\_\_\_; \$ \_\_\_\_\_ year \_\_\_\_; \_\_\_\_\_ year \_\_\_\_.

23. Do you have \$2,000,000 or more of Comprehensive General Liability insurance coverage

Yes \_\_\_ No \_\_\_.

If no, explain why on separate signed page.

By signing this Statement of Qualifications below, the undersigned acknowledges that he/she has read, reviewed and understands this Request for Proposal, in its entirety, including the attached Agreement and Basic Services. The undersigned is duly authorized to execute this Statement of Qualifications under penalty of perjury on behalf of the above-identified organization. The undersigned warrants and represents that he/she has read the statement and that he/she has personal knowledge of each of the responses to this Statement of Qualifications and/or that he/she has conducted all necessary and appropriate inquiries to determine the truth, completeness and accuracy of responses to this Statement of Qualifications. The undersigned declares and certifies that the responses to this Statement of Qualifications are complete and accurate; there are no omissions of material fact or information that render any response to be false or misleading and there are no misstatements of fact in any of the responses. By signing this Statement of Qualification, the above organization hereby authorizes any person or entity, whether or not named in this Statement of Qualification, to supply the District with any information necessary to verify the contents of the Statement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**AFFIDAVIT OF AN INDIVIDUAL FOR A SOLE PROPRIETORSHIP**

I, \_\_\_\_\_, am an individual doing business as \_\_\_\_\_

This Statement of Qualifications is executed this \_\_\_\_ day of \_\_\_\_\_ 2008  
at \_\_\_\_\_  
(City and State)

Signature of Applicant \_\_\_\_\_

**PARTNERSHIP AFFIDAVIT**

I, \_\_\_\_\_, am a partner of \_\_\_\_\_  
(Name) (Name of Firm)

This Statement of Qualifications is executed this \_\_\_\_ day of \_\_\_\_\_ 2008  
at \_\_\_\_\_  
(City and State)

Signature of Applicant \_\_\_\_\_

**CORPORATION AFFIDAVIT**

I, \_\_\_\_\_, am \_\_\_\_\_, an officer of \_\_\_\_\_  
(Name) (Title of corporation officer) (Full Corporate Name)

This Statement of Qualifications is executed this \_\_\_\_ day of \_\_\_\_\_ 2008  
at \_\_\_\_\_  
(City and State)

Signature of Applicant \_\_\_\_\_

**[Provide copy of certificate from Secretary of State indicating standing of Corporation]**

Intentionally Left Blank

**FINANCIAL STATEMENT**

<b>ASSETS</b>	<b>DETAIL</b>	<b>TOTAL</b>
<u>CURRENT ASSETS</u>		
1. FREE AND UNRESTRICTED	\$	
2. NOTES RECEIVABLE	\$	
3. ACCOUNTS RECEIVABLE FROM COMPLETED CONTRACTS	\$	
4. ACCOUNTS RECEIVABLE, SUMS BILLED ON INCOMPLETE CONTRACTS	\$	
5. OTHER ACCOUNT(S) RECEIVABLE	\$	
6. ADVANCES TO CONSTRUCTION JOINT VENTURES	\$	
7. MATERIAL IN STOCK NOT INCLUDED IN ITEM 4	\$	
8. NEGOTIABLE SECURITIES	\$	
9. OTHER CURRENT ASSETS	\$	
TOTAL OF CURRENT ASSETS		\$ _____
<u>FIXED AND OTHER ASSETS</u>		
10. REAL ESTATE	\$	
11. CONSTRUCTION PLANT AND EQUIPMENT	\$	
12. FURNITURE AND FIXTURES	\$	
13. INVESTMENTS OF A NON-CURRENT NATURE	\$	
14. OTHER NON-CURRENT ASSETS	\$	
TOTAL OF FIXED AND OTHER ASSETS	\$	
<b>TOTAL ASSETS</b>	<b>\$</b>	
<b>LIABILITIES AND CAPITAL</b>		
<u>CURRENT LIABILITIES</u>		
15. NOTES PAYABLE, EXCLUSIVE OF EQUIPMENT OBLIGATIONS AND REAL ESTATE ENCUMBRANCES	\$	
16. ACCOUNTS PAYABLE	\$	
17. OTHER CURRENT LIABILITIES	\$	
<b>CURRENT LIABILITIES</b>	<b>\$</b>	
<u>OTHER LIABILITIES</u>		
18. REAL ESTATE ENCUMBRANCES	\$	
19. EQUIPMENT OBLIGATIONS SECURED BY EQUIPMENT	\$	
20. OTHER NON-CURRENT LIABILITIES	\$	
OTHER LIABILITIES		\$ _____

CAPITAL AND SURPLUS

21 CAPITAL STOCK, PAID UP \$  
22. RETAINED EARNINGS \$

SUBTOTAL OF CAPITAL AND RETAINED EARNINGS \$

CONTINGENT LIABILITIES

23. LIABILITY ON NOTES RECEIVABLE  
DISCOUNTED OR SOLD \$  
24. LIABILITY ON ACCOUNTS RECEIVABLE,  
PLEGGED, ASSIGNED OR SOLD \$  
25. LIABILITY AS A BONDSMAN \$  
26 LIABILITY AS GUARANTOR ON CONTRACTS  
OR ON ACCOUNTS OF OTHERS \$  
27. OTHER CONTINGENT LIABILITIES \$

TOTAL OF CONTINGENT LIABILITY \$

TOTAL LIABILITIES \$ \_\_\_\_\_

**SUPPORTING SCHEDULES RE BALANCE SHEET ASSETS**

FOR EACH LINE ITEM BELOW, LIST ANY AND ALL INDIVIDUAL ASSETS THAT EXCEED 10% OF TOTAL ASSETS, AND ANY AND ALL INDIVIDUAL ASSETS OF \$50,000 OR MORE. FOR EACH ASSET LISTED, IDENTIFY THE DEBTOR, DUE DATE, AND SECURITY FOR HELD FOR THE DEBT.

1. NOTES RECEIVABLE: \_\_\_\_\_  
\_\_\_\_\_
2. ACCOUNTS RECEIVABLE FROM COMPLETED CONTRACTS EXCLUSIVE OF CLAIMS NOT APPROVED FOR PAYMENT: \_\_\_\_\_  
\_\_\_\_\_
3. SUMS EARNED BUT NOT PAID ON INCOMPLETE CONTRACTS. \_\_\_\_\_
4. OTHER ACCOUNTS RECEIVABLE: \_\_\_\_\_

**SUPPORTING SCHEDULES TO BALANCE SHEET LIABILITIES**

FOR EACH LINE ITEM BELOW, LIST ANY AND ALL INDIVIDUAL LIABILITIES THAT EXCEED 10% OF TOTAL LIABILITIES, AND ANY AND ALL INDIVIDUAL LIABILITIES OF \$50,000 OR MORE. FOR EACH LIABILITY LISTED, IDENTIFY THE CREDITOR, DUE DATE, ANY SECURITY PLEDGED, AND THE AMOUNT AND PERIOD OF ANY PERIODIC PAYMENT.

1. NOTES PAYABLE, OTHER THAN ON EQUIPMENT OR REAL ESTATE: \_\_\_\_\_  
\_\_\_\_\_
2. NOTES SECURED BY REAL ESTATE: \_\_\_\_\_  
\_\_\_\_\_
3. NOTES SECURED BY EQUIPMENT: \_\_\_\_\_  
\_\_\_\_\_
4. ACCOUNTS PAYABLE: \_\_\_\_\_ 5. OTHER CURRENT LIABILITIES: \_\_\_\_\_

EXHIBIT 3

**BEVERAGES, SNACK, AND RECYCLING SERVICES OPERATION AGREEMENT**

This Beverages, Snack, and Recycling Services Operation Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2015 by and between Gavilan Joint Community College District (“District”) and \_\_\_\_\_ (“Operator”) who are collectively referred to as “the Parties.” This Agreement is entered into with reference to the following Recitals, all of which are incorporated into this Agreement.

**RECITALS**

WHEREAS, in or about \_\_\_\_\_, 2015, the District issued a written Request for Proposals (“RFP”), identified as the District’s RFP No. 15-001 and pursuant to which the District solicited proposals for operation of beverages and snack vending machines and related recycling services at the District’s Gavilan College campus and off sites; by this reference, the RFP is incorporated into this Agreement.

WHEREAS, the Operator submitted a written response to the RFP (“the RFP Response”); by this reference, the RFP Response is incorporated into this Agreement.

WHEREAS, the District and the Operator desire to set forth in this Agreement, the terms, conditions and covenants relating to the Operator’s operation of beverages and snack vending machines and related recycling services.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties, the Parties agree as follows:

1. **Term.** The term of this Agreement is five (5) years, commencing on July 1, 2015 (“the Commencement Date”) and terminating on June 30, 2020 (“the Termination Date”). Each 12-month period during the Term beginning with the Commencement Date shall be called an “Agreement Year.”
  - 1.1 Operator Vacation of Services. As of the Termination Date, at its sole cost and expense, the Operator shall remove from District premises all items in the nature of personal property not owned by the District and to leave the District premises in a neat and broom clean condition (reasonable wear and tear excepted). Except as otherwise directed by the District, prior to the Termination Date, the Operator shall remove alterations, modifications or improvements to the District premises and restore damage to the District premises resulting from the removal of such alterations, modifications or improvements. If, within 14 days after the Termination Date, any items of a personal property nature not owned by the District remain in or about the District premises or there are alterations, modifications or improvements to the District premises not removed by the Operator, without further action of the District or the Operator, all such items shall be deemed the property of the District and the District may thereafter retain or dispose of such items at its sole discretion without liability to the Operator.



1.2 Operator Hold-Over. If the Operator does not vacate the District premises as of the Termination Date, for each day beyond the Termination Date, until the Operator has vacated the District premises in accordance with Paragraph 1.1 above, the Operator shall pay to the District the amount of Five Hundred Dollars (\$500) per day; provided that any such hold-over shall not be construed as an extension of the Term nor consent of the District to the Operator's hold-over.

**2. Beverage and Snack Vending Machines and Related Recycling Services and Equipment.**

2.1 Vending Machine Locations.

2.1.1 Initial Installations. Distribution and installation of new Operator's beverage and snack vending machines will be at the discretion of the District. Initial installation of the Operator's snack and beverage vending machines shall be as identified in Exhibit A ("Vending Machine Locations Map") attached to this Agreement and incorporated herein by this reference.

2.1.2 Additional/Modified Installations. At the sole discretion of the District, and upon the District's written notice to the Operator, the Operator shall install additional vending machines or modify location(s) of installed vending machines.

2.1.3 Operator Installation of Vending Machines. A material obligation of the Operator is its timely installation of vending machines. Operator shall complete the initial installations of vending machines described in Paragraph 2.1.1 above within ten (10) days of the date of this Agreement. During the Term of the Agreement, the Operator shall install additional vending machines or modify installed vending machines within ten (10) days of the District's written notice issued pursuant to Paragraph 2.1.2 above.

2.2 Improvements to Support Beverage and Snack Vending Machines and Related Recycling Services. The locations designated by the District for the Operator's placement of vending machines are provided by the District to the Operator on an "as-is" basis. Improvements, if any, to such locations, necessary to support the operation and use of the Operator's vending machines shall be completed by the Operator. All costs associated with improvements, including without limitation, electrical wiring, relocation of existing power supplies, or concrete slab installation, and or security cages, if needed, will be at the Operator's sole cost and expense.

2.2.1 District Approval of Improvements. Any improvements by the Operator, other than placement of vending machines shall be subject to review and approval by the District. If required by the District or by the nature, scope or extent of improvements proposed by the Operator, the Operator shall prepare or have prepared drawings, specifications or other design documents setting forth the nature, scope and extent of the Operator's proposed improvements, including an identification of the materials and equipment proposed. Operator shall make no improvements or otherwise modify any District property without the prior consent and approval of the District, which may be granted, denied or limited in the sole discretion of the District. In completing any District approved improvements, Operator shall comply with all other requirements established by the District including without limitation, quality of workmanship, safety standards, limitations on utility service interruptions and limitations on disruptions to District operations.

2.2.2 Operator Completion of Improvements. Upon the District's approval of improvements to District property proposed by the Operator, the Operator shall have the improvements completed, constructed or installed by the Operator's personnel or the personnel of a California licensed Contractor. If District

approved improvements are completed by a Contractor retained by the Operator, such Contractor shall not be permitted access to District property until: (a) Operator has provided the District with the name, address, telephone and other contact information for the Contractor (including contact information for the Contractor's principal personnel for the District approved improvements); and (b) Operator has provided the District with the Contractor's Certificate(s) of insurance evidencing the following coverage's in the minimum coverage amounts noted: Workers Compensation Insurance (in accordance with legal requirements), Employers Liability (One Million Dollars (\$1,000,000), Commercial General Liability, including motor vehicle liability (One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate). The District shall be an Additional Named Insured under the Contractor's Commercial General Liability Insurance policy.

2.2.3 Timely Completion of Improvements. If the District establishes a time for completion of District approved improvements, Operator shall complete or cause to be completed such improvements within the time established by the District. If the Operator fails or refuses to complete District approved improvements within the time established by the District, the District may thereafter take-over and complete such improvements. All costs, expenses and fees, including without limitation, attorneys' fees incurred by the District in taking over and completion of District approved improvements shall be at the sole cost and expense of the Operator. Upon the District's submission of a billing statement to the Operator for payment of such fees, costs and expenses, the Operator shall make payment in full to the District within thirty (30) days of the District's rendition of a billing statement therefor to the Operator.

2.3 Limited License For Operator's Placement of Vending Machines and For Access. Provided that Operator is not in default or breach of this Agreement, the District grants Operator a non-exclusive license of the designated areas for installation of Operator's vending machines. The use of such non-exclusive license to use District property shall be limited to operations and functions of the Operator under this Agreement. The non-exclusive license shall terminate as of the expiration of the Term of this Agreement or the earlier termination of this Agreement. Operator shall not assign the non-exclusive license granted hereunder without the prior consent and approval of the District, which may be granted, denied or conditioned in the sole discretion of the District.

2.4 Maintenance of Beverage and Snack Vending Machines and Related Recycling Services and Equipment.

2.4.1 Operator Responsibilities. Beverage and snack vending machines shall be new. Any machinery with dents, cracks, paint chips, etc. will not be acceptable. All beverage vending machines shall be attractive in appearance using the latest designs in the market place and shall match each other in color and style. If a machine cannot be maintained in an operational order or if it is in constant need of repair, the machine shall be replaced as directed by the District. The Operator will repair or replace such equipment at its expense. The Operator shall add or replace beverage and snack vending machines at the discretion of the District without delay. Operator shall not relocate, exchange, or remove installed vending machines without the District prior consent and approval, providing that such approval may be withheld, granted or conditioned in the sole discretion of the District.. During the Term of the Agreement, Operator shall be responsible, at its sole cost and expense, for maintaining in good working order any District approved improvements completed by or on behalf of

the Operator. If the Operator does not perform and complete maintenance functions within ten (10) of the District's written notice to the Operator of maintenance needs, without waiving or limiting any right or remedy of the District, the District may thereafter complete required maintenance at the cost and expense of the Operator. The Operator's maintenance obligations shall be performed during the usual hours of work for Gavilan College. The Operator shall not be deemed in default of its maintenance obligations hereunder if commencement or completion of necessary maintenance activities is delayed by causes beyond the reasonable control of the Operation such as and including labor disturbances, civil disturbances and unanticipated parts unavailability.

2.4.2 District Responsibilities.

2.4.2.1 Structural Elements. The District is responsible for maintaining structural elements of District property on which the Operator's vending machines are situated, in good order, condition and repair. The Operator's payment obligations under this Agreement shall not be reduced, limited or deferred by any District activities relating to the District's maintenance obligations hereunder nor the failure of the District to undertake maintenance obligations hereunder unless such failure persists for an unreasonable period of time after the Operator's written notice to the District of the need to undertake maintenance obligations described hereinabove.

2.4.2.2 Utility Services. Provided that the Operator is not in default or breach of its obligations under this Agreement, the District will provide electrical power and domestic water utility services at the locations of the Operator's vending machines for the purpose of serving the Operator's vending machines. Notwithstanding any provision of this Agreement to the contrary, the District shall not be liable, in any manner, to the Operator if utility services to be provided by the District under this Agreement are eliminated, disrupted or limited, so long as elimination, disruption or limitation on District furnished utility service is not the result of the District's failure to make payment of undisputed utility service charges.

2.4.3 District Right to Relocate Machines and Equipment. During the Term of this Agreement, the District may, at its sole and exclusive discretion, elect to relocate the machines and equipment to a different area on the Gavilan College campus.

2.4.3.1 District Notice of Relocation. If the District elects to re-locate the machines and equipment, the District will provide advanced written to the Operator of at least sixty (60) days prior to the effective date of the relocation.

2.4.3.2 Relocation Costs. The Operator is solely responsible for arranging for relocation of the machines, equipment, and inventory to the alternate location designated by the District; all costs, fees or expenses of such relocations shall borne solely and exclusively by the Operator. If the Operator fails or refuses to complete relocation as mutually agreed or as reasonably directed by the District, the District may complete such relocation at the cost and expense of the Operator.

2.5 Ownership of Vending Machines. Ownership of Operator Personal Property including the Operator's beverage and snack vending machines shall be, at all times, vested solely in the Operator. During the Term of this Agreement, the District shall not encumber any Operator Personal Property nor permit any other equipment to be attached to the Operator's vending machines, without the prior consent of the Operator.

### 3. **Operations.**

3.1 General. The District and the Operator acknowledge that the overriding objective in operating this Agreement is the development and implementation of a tailor-made comprehensive program of services and product lines to meet the requirements of Gavilan College and its students, faculty and staff. The District and the Operator acknowledge that mutual cooperation between the District, Gavilan College faculty and the Operator to identify adds, deletions or modifications to services and products offered is essential to achieving this objective; By executing this Agreement, the Operator and the District commit themselves and their respective personnel to such mutual cooperation.

#### 3.2 Exclusive Pouring and Beverage Vending Rights.

3.2.1 General. The Operator will have exclusive beverage pouring and beverage vending rights at all current and future District facilities. The Operator will have exclusive beverage pouring rights within the District's cafeteria facility. The Operator will provide the District with one (1) fountain dispenser for this location. In the event the District provides prepared food services at additional locations, including District facilities not situated at the Gavilan College campus, the Operator will provide one (1) fountain dispenser for each designated location. All fountain dispensers will be provided at the expense of the Operator. The Operator shall at its cost and expense maintain all fountain dispensers provided under this Agreement in good working order. The Operator acknowledges that the District has entered into an agreement with an independent contractor ("the Cafeteria Operator" to operate and manage the Gavilan College Cafeteria pursuant to which the Cafeteria Operator has committed to offering for sale only the beverages produced or distributed by the Operator. The Operator further acknowledges that the exclusive beverage pouring rights in connection with the Gavilan College Cafeteria is limited to the Cafeteria Operator's offerings of beverages produced or distributed by the Operator, provided that the exclusive beverage pouring rights do not extend to the sale of fruit juice or dairy products in the Gavilan College Cafeteria. The Operator acknowledges and agrees that so long as beverages sold in the Gavilan College Cafeteria are produced or distributed by the Operator, the Cafeteria Operator may obtain such beverages or components of such beverages for sale in the Gavilan College Cafeteria from any source in the Cafeteria Operator's sole discretion and that the Cafeteria Operator may offer for sale fruit juice and dairy products that are neither produced nor distributed by the Operator.

3.2.2 ASGC Clubs; ASGC Events. The District will establish policies regulating beverages which may be offered for sale by the Associated Students of Gavilan College ("ASGC") and ASGC Clubs to the effect that beverage products of the Operator's competitors will not be offered for sale by the ASGC or an ASGC Club. The foregoing notwithstanding, the District shall not be deemed in breach or default of this Agreement if: (a) the ASGC or an ASGC Club offers beverages of the Operator's competitors for sale, unless the District has

received written notice from the Operator of the sale of competitor's beverages by the ASGC or an ASGC Club and the District has taken no measures to enforce the beverage sale limitation described above; or (b) if the ASGC or an ASGC Club offers for sale the Operator's beverage obtained by the ASGC or ASGC Club from a source other than the Operator.

- 3.3 Beverage Product Type and Container. Beverage vending machines shall consist of: carbonated beverages, non-carbonated beverages, bottle water, and/or teas, isotonic beverages, and new age beverages. Alcoholic beverages are prohibited. All beverages must be pre-approved by the District prior to stocking. The District will have final approval if and when a hot beverage vending machine is to be installed. The District will decide of the proper location and as to what product is sold. Operator shall affix and maintain appropriate signage warning customers of the nature of the contents and its temperatures on each of the Operator's vending machines installed under this Agreement. All beverage vending machines shall contain product in plastic or paper containers only. Cans or glass containers will not be permitted. Ninety percent (90%) of the products offered in each beverage vending machine will be determined by the Operator with the consent and approval of the District, which shall not be unreasonably withheld or conditioned. Ten percent(10%) of the products offered in each beverage vending machine shall be determined by the District and stocked by the Operator, provided that the District designated projects shall not include competitive products.
- 3.4 Snack Product Type and Containers. The Operator shall provide high quality fresh merchandise. All food products will be removed from snack vending machines on or before the date that their freshness date expires. All sandwiches and salads will be considered past-dated after one (1) day. All other products will be considered past-dated according to the manufacturer's freshness date stamped on the package. The District shall determine whether the Operator food is of satisfactory quality and whether sufficient variety is being offered. Ninety percent (90%) of the products offered in each snack vending machine will be determined by the Operator with the consent and approval of the District, which shall not be unreasonably withheld or conditioned. Ten percent (10%) of the products offered in each snack vending machines shall be determined by the District and stocked by the Operator. Alcohol and tobacco products will not be permitted. All snack vending machines shall contain product in paper or plastic sealed containers only. Can or glass containers will not be permitted.
- 3.5 Recycling Program and Trash Containers. The Operator will provide one (1) or more recycling container(s) for paper and plastic at each beverage vending machine location. The Operator will be responsible for emptying all recyclables on a weekly basis or as determined by the District. The Operator will also provide the District with trashcans at each snack vending location per the approval of the District. The District will be responsible for emptying all trashcans. The Operator will provide these containers at their expense.
- 3.6 Sales Policies.
- 3.6.1 Payment Methods. Beverage and snack vending machines must accept any combinations of nickels, dimes, quarters, and dollar bills. If necessary, or if directed by the District the Operator shall install and maintain a dollar bill/coin changer in such locations determined by the Operator or as directed by the District. .
- 3.6.2 Sales Refunds. The Operator shall conspicuously post, at each vending machine location, a procedure for patrons of vending services to receive refunds from the Operator for faulty working machines and any products that

are not up to standard. The Operator shall make refunds within two (2) business days of when the Operator receives a refund request.

3.6.3 Pricing Policies. Pricing for the first twelve (12) months of the Term of this Agreement, in all vending machines, will remain at or below prices submitted in the RFP. At the end of the initial twelve (12) months of the Term, the Operator may raise prices only if there are documented increases in its wholesale costs and shall notify the District at least two (2) weeks in advance of the date of a proposed price adjustment with supporting documentation that the Operator costs on the affected item(s) has/have increased. Price increases are subject to the approval of the District. Posting of prices for products offered in the Operator's vending machines shall be in plain sight on each vending machine. The District will be the sole judge of sign quality, size of letters, and propriety of any price signs posted, Operator shall promptly comply with any directive of the District relating to vending machine signage.

3.7 Operator Personnel.

3.7.1 General. The Operator is solely responsible for the recruitment and retention of personnel necessary to operate beverage and snack vending machines and recycling services. The Operator is solely responsible to the District and third parties for the acts, omissions and other conduct of the Operator personnel as well as the consequences thereof. All persons engaged by the Operator shall be direct employees of the Operator or be qualified independent contractors under written agreement with the Operator.

3.7.2 Employment Policies. The Operator shall comply with all applicable laws, rules and regulations relating to the recruitment, hiring and promotion of employees. The Operator acknowledges that the District and Gavilan College require that all contractors and vendors to the District and Gavilan College, including the Operator is prohibited from engaging in preferential or discriminatory practices relating to recruitment, hiring and promotion of employees. The Operator shall not engage in any such preferential or discriminatory practices.

3.7.3 Employee Conduct. All personnel employed by the Operator, whether as employees or independent contractors shall receive sufficient training by the Operator to be competent to perform tasks assigned and shall generally conform to the conduct expected of Gavilan College employees. While performing functions under this Agreement at Gavilan College or other District facilities, personnel of the Operator or any Contractor or Subcontractor to the Operator shall comply with all applicable standards of conduct. Any individual violating standards of conduct established by the District, including amendments thereto from time-to-time, shall be subject to immediate removal from Gavilan College or other District facility.

**4. Operator Compensation to the District.**

4.1 Initial Sponsorship Payment. Within thirty (30) days of the signing of this Agreement by both parties, the Operator shall make the Initial Sponsorship Payment to the District in the amount of Fifty Thousand Dollars (\$50,000) minimum.

4.2 Annual Payments. For each calendar year of the Term, the Operator shall make an Annual Payment to the District in the amount of Ten Thousand Dollars (\$10,000) minimum ("the Annual Payment"). The Annual Payment shall be made on July 1 of each year of this agreement.

4.3 Percentage of Revenue Payments. In addition to the Annual Payments due pursuant to Paragraph 4.1 above, the Operator shall make annual payments of the Percentage of Revenue due for the Fiscal Year based on (a) thirty percent (30%) of Net Revenue

generated from snack vending machine sales; (b) fifty percent of Net Revenue generated from beverage vending machine sales; and (c) fifty percent (50%) of Gross Revenue generated from related recycling services. Net revenue shall be calculated by multiplying the cash collected from the vending machines by the respective percentages set forth above, less applicable sales tax and CRV. Within thirty (30) days of the end of each Fiscal Year of the Term, the Operator shall prepare and submit to the District a detailed statement of Gross and Net Revenues realized for the Fiscal Year along with a calculation of the Percentage of Revenue due the District for that Fiscal Year; the Operator's statement of Gross and Net Revenues shall include such back-up and substantiating data as may be requested by the District. The Operator shall make a lump sum payment of the Percentage of Revenue due for each Fiscal Year of the Term concurrently with its submission of the statement of Fiscal Year Gross and Net Revenues. The Operator acknowledges that notwithstanding the expiration of the Term, it is obligated to submit the statement of Gross and Net Revenue for the last Fiscal Year of the Term and to make payment of the Percentage of Revenue for the last Fiscal Year of the Term, within thirty (30) days of the Termination Date. For purposes of this provision, each Fiscal Year shall commence on the date of the month of the Commencement Date and shall end the twelfth (12th) month thereafter.

- 4.4 Operator Annual Contributions. For each of the five years of the Term of this Agreement, Operator shall provide contributions of goods and merchandise (example: sideline kits) with a fair market value of at least Two Thousand Five Hundred Dollars (\$2,500) minimum for use, distribution or consumption at District sponsored or District sanctioned athletic, cultural, fundraising and other similar events. At events where the Operator's contributions of goods or merchandise is used, distributed or consumed, the District will afford the Operator a reasonable opportunity to identify itself, its products and its contributions to such event. The nature and scope of the Operator's displays or other Operator promotional items at such events shall be subject to the advance consent and approval of the District, which may be granted, denied or conditioned in the sole discretion of the District.
- 4.5 Additional Annual Contributions. For each of the five years of the Term of this Agreement, the Operator shall make additional annual contributions in the amount of Ten Thousand Dollars (\$10,000) minimum to fund District Programs and Activities including, without limitation, scholarship funds, ASB programs and athletic programs. The District shall have sole and exclusive discretion regarding the allocation, apportionment and distribution of the additional annual contributions; however, all funds will be awarded in the name of the Operator. To the extent all or a portion of such funds are allocated for Scholarship Awards to one or more Gavilan College students, the funds will be awarded in the name of the Operator in accordance with criteria established by the Gavilan College Financial Aid office. The Annual Payment shall be made in equal quarterly installments, with each quarterly installment due on the first day of each quarter during the Term.
- 4.6 Operator Books and Records. The Operator shall maintain current, complete and accurate books and records pertaining to costs and expenses relating to its operations under this Agreement. All such books and records shall be maintained on computerized systems utilizing commercially available software and shall be maintained in accordance with generally accepted accounting principles applied in a consistent manner. All books and records maintained by the Operator hereunder shall be available to the District for inspection, review and reproduction; the Operator acknowledges that the availability of books and records for District inspection, review

or reproduction is a material obligation of the Operator under this Agreement. The District reserves the right to audit the books and records maintained by the Operator relating to operations. The District shall be solely responsible for the costs of such audit, unless the results of such audit show that the Gross Revenue in any twelve (12) month period of the Term is understated by the Operator by five percent (5%) or more, then the Operator shall be responsible for payment of all audit costs. If upon inspection of the Operator's books and records, the District determines that underpayments have been made by the Operator, the Operator shall make payment in full to the District of such underpayment within thirty (30) days of the District's rendition of a billing statement therefor.

4.7 District Remedies for Late Payments.

4.7.1 Service Charge. If the Operator fails to make payment of any sum due under this Agreement to the District for the amount due and when due, the Operator shall pay to the District a service charge equal to ten percent (10%) of the amount due. The Operator acknowledges and agrees that the late payment of any sum due from the Operator to the District will cause the District to sustain losses and damages not contemplated by this Agreement and which will be extremely difficult to ascertain and that such service charge represents a fair estimate of the losses and damages which the District will sustain by reason of late payment by the Operator. The Operator further agrees that such service charge shall not be deemed or construed to be a waiver of the Operator's default with respect to such overdue payment nor prevent the District from exercising any other right or remedy, whether arising under this Agreement or by operation of law, arising out of such late payment.

4.7.2 Default. The failure of the Operator to make payment in full when due to the District shall be deemed the Operator's default in its performance of material obligations under this Agreement. If the Operator fails to fully cure such default in accordance with Paragraph 6.1 of this Agreement after the District's notice of default issued under Paragraph 6.1 of this Agreement, the District may thereupon exercise any right or remedy, whether arising under this Agreement or by operation of law, resulting from the Operator's default in the performance of material obligations.

4.7.3 Attorneys' Fees. Notwithstanding any provision of this Agreement to the contrary, if the District retains legal counsel to initiate collection procedures, including without limitation, legal proceedings to collect late payments due from the Operator or service charges due from the Operator on account of overdue payments, the Operator shall pay, as costs, all reasonable legal fees and other related expenses arising out of or related in any manner to such collection procedures, including legal proceedings.

**5. Insurance and Indemnity.**

5.1 Operator Insurance. At all times during the Term, the Operator shall obtain and maintain the following policies of insurance described in this Paragraph 5.

5.1.1 General Requirements. All insurance policies required by this Paragraph 5 shall be issued by insurance carriers authorized to issue insurance in the State of California and who hold an A.M. Best rating of A- or better. If at any time during the Term an insurer issuing a required policy of insurance has an A.M. Best rating less than A-, the District may in its sole discretion require the Operator to obtain a replacement policy of insurance issued by an insurance carrier with an A.M. Best rating of A- or better.



- 5.1.2 Commercial General Liability Insurance. The Operator shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Operator's operations under this Agreement and for which the Operator may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Operator's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained: (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iii) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages, including claims arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance; (vi) completed operations and (vii) product liability. The District shall be an additional named insured on the Operator's Commercial General Liability insurance policy. The minimum coverage amounts of the Operator's Commercial General Liability insurance policy shall be One Million Dollars (\$1,000,000) per occurrence and Two Million (\$2,000,000) aggregate.
- 5.1.3 Workers Compensation Insurance; Employers Liability Insurance. The Operator shall purchase and maintain Workers' Compensation Insurance as will protect the Operator from claims under applicable workers' or workmen's compensation, disability benefit and other similar employee benefit acts. Operator shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Operator. The Employer's Liability Insurance required of Operator hereunder may be obtained by Operator as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Operator hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions. Coverage amounts under the Workers Compensation Insurance shall be in accordance with applicable law. The minimum coverage amount under the Operator's Employers Liability insurance policy shall be One Million Dollars (\$1,000,000).
- 5.1.4 Casualty Insurance. The Operator shall maintain in effect one or more policies of casualty insurance covering: (a) all improvement in, on or about the vending machine premises and (b) trade fixtures, merchandise and other personal property from time-to-time in, on or about the vending machine premises. Such policy(ies) shall include coverage and protection against any peril included in the definition of "fire and extended coverage," malicious mischief, theft, sprinkler leakage, earthquake sprinkler leakage, and flood damage. Proceeds of such insurance shall be used to repair or replace damaged/destroyed property.
- 5.1.5 Operator's Certificates of Insurance. Concurrently with its execution of this Agreement, Operator shall deliver to the District Certificates of Insurance evidencing the insurance coverage's and the minimum coverage amounts set forth in Paragraphs 5.1.2, 5.1.3 and 5.1.4 above.
- 5.1.6 District Insurance. The District will obtain casualty insurance covering common areas in which the vending machine premises are situated and which will provide coverage and protection against any peril included in the definition of "fire and extended coverage," malicious mischief, theft, sprinkler leakage,

earthquake sprinkler leakage, and flood damage. Proceeds of such insurance shall be used to repair or replace damaged/destroyed property. In lieu of a commercially obtained policy of casualty insurance, the District may obtain a policy of insurance pursuant to a Joint Powers Authority or to self-insure against such risks.

5.1.7 Waivers of Subrogation. The District and the Operator waive any and all rights of recovery against the other and the other's directors, trustees, officers, shareholders, partners, employees, agents and representatives, on account of loss of damage of such waiving party or its property or the property of others under the possession, custody or control of the waiving party, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage.

5.2 Operator Indemnity of the District. Unless arising solely out of the active negligence, gross negligence or willful misconduct by the District, the Operator shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys' fees and costs which arise, in whole or in part, from this Agreement. or the acts, omissions or other conduct of the Operator or its officers, directors, employees, agents, independent contractors or representatives. The Operator's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; (iii) theft or loss of property; and (iv) other losses, liabilities, damages or costs resulting from, in whole or in part, any acts, omissions or other conduct of the Operator or its officers, directors, employees, agents, independent contractors or representatives. For purposes of the preceding, the Indemnified Parties are the District and its Board of Trustees, officers, employees, agents and representatives. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Operator's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Operator shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Operator shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Operator shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Operator's obligations hereunder shall survive notwithstanding expiration of the Term or the earlier termination of this Agreement.

## **6. Termination.**

6.1 District Termination for Operator Default. If the Operator is in default of any material obligations of the Operator under this Agreement, upon written notice from the District to the Operator of such default, the Operator shall, within seven (7) days of such notice cure such default, unless the nature of the default is such that it cannot be cured within said seven (7) day period, the Operator shall diligently prosecute such cure to completion. If the Operator fails or refuses to cure any default within the time set forth above, without further action of the District or the Operator, this Agreement shall be deemed terminated as of the last day of the cure period. In addition to material obligations of the Operator set forth elsewhere in this Agreement, the following shall be

deemed the Operator's default of material obligations hereunder: (a) the failure to maintain operations; (b) the failure to make any payment of any sum due hereunder in the full amount due and when due; (c) the violation of any applicable law, rule, regulation or ordinance; (d) the making of a general assignment for the benefit of creditors; or (e) the appointment of a receiver or trustee to take possession of, or the attachment, execution or other judicial seizure of all or substantially all of the Operator's assets on the District premises.

6.2 Operator Liability Following Default. Notwithstanding termination of this Agreement for the Operator's default of material obligations pursuant to Paragraph 6.1 above, the Operator shall remain liable to the District for all damages, losses, costs and other expenses incurred by the District as a result of the Operator's default of material obligations.

6.3 Operator Termination for District Default. If the District in default of a material obligation of the District under this Agreement, upon written notice from the Operator to the District of such default, the District shall, within twenty (20) days of such notice cure such default, unless the nature of the default is such that it cannot be cured within said twenty (20) day period, the District shall diligently prosecute such cure to completion. If the District fails or refuses to cure any default within the time set forth above, without further action of the District or the Operator, this Agreement shall be deemed terminated as of the last day of the cure period.

7. Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Operator, terminate the Agreement in whole or in part when it is in the interest of, or for the convenience of, the District. The District's exercise of the right to terminate the Agreement for the District's convenience shall be by written notice to the Operator which shall set forth the date on which the Agreement is terminated ("the Termination Date") which shall be at least thirty (30) days after the date of such written notice. Prior to the Termination Date, all terms and conditions of the Agreement shall be applicable, except in the five (5) calendar days preceding the Termination Date ("the Demobilization Period"). During the Demobilization Period, the Operator shall remove its vending machines and restore the locations where such vending machines are located to the condition existing at the time of the Operator's initial installation of vending machines, reasonable wear and tear excepted. Within thirty (30) days after the Termination Date, the Operator shall provide the District with an accounting for the commissions due to the District for vending machine operations prior to the Demobilization Period; amounts due the District shall be paid by the Operator in full to the District within sixty (60) days of the Termination Date. The District may, after the Termination Date, award or enter into other Agreements for identical services, products, or merchandise similar to those under this Agreement, without liability to the Operator.

8. **Miscellaneous.**

8.1 Governing Law. This Agreement shall be governed and interpreted pursuant to the laws of the State of California and in accordance with its fair meaning and not strictly for or against the District or Operator. 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 here from, but all remaining provisions will remain and continue in full force and effect.

8.2 Time. Time is of the essence to this Agreement.

8.3 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Operator and the District. Neither Operator nor District shall assign rights or obligations hereunder without the

prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

8.4 Attorneys' Fees. Unless otherwise expressly set forth in this Agreement, the District and the Operator shall each bear their own attorney's fees and other legal costs arising out of or related in any manner to this Agreement.

8.5 Notices. Notices which either Party are required or desire to serve on the other shall be effective only if transmitted by prepaid postage United States Mail, Certified, Return Receipt Requested. Notices transmitted pursuant to the foregoing shall be deemed received the third business day after deposit in the mail. Notices hereunder shall be addressed as follows:

If to the District:  
Frederick E. Harris  
Gavilan College  
5055 Santa Teresa Boulevard  
Gilroy, CA 95020

If to Operator:

8.6 District Cumulative Rights and Remedies. 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 in equity. No action or failure to act by District shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default of the Operator.

8.7 Dispute Resolution. Claims, disputes or disagreements between the District and the Operator arising out of or related in any manner to this Agreement or the rights/obligations under this Agreement shall be resolved in accordance with this Paragraph 7.7.

8.7.1 Mandatory Mediation. All claims, disputes and other matters in controversy between the Operator and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the Commercial Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Operator commencing arbitration proceedings pursuant to Paragraph 7.7.3. Neither this mediation provision nor the arbitration provision, below, however, shall constitute or be deemed a waiver by the District of any and all jurisdictional challenges to the claims including, without limitation, claims that the action is barred by the applicable statute of limitations, California Tort Claims Act, and/or any and all statutory conditions precedent.

8.7.2 Jurisdictional Challenges to Arbitration. The Superior Court of the State of California for the County of Santa Clara shall have sole and exclusive jurisdiction to hear and rule upon all claims, disputes and/or disagreements

arising out of or pertaining to jurisdictional challenges to arbitration including (1) whether claimant has waived its right to arbitration (Code of Civil Procedure § 1281.2(a)); (2) whether grounds exist for revocation of the agreement (Code of Civil Procedure § 1281.2(b)); (3) whether a party to the arbitration agreement is also a party to pending court action or special proceeding with a third party arising out of the same transaction series of related transactions and there is a possibility of conflicting rulings on a common issue or fact or law (Code of Civil Procedure § 1281.2(c)); (4) whether the claims is time-barred by the applicable statute of limitations; (5) whether the claim is time-barred by the California Tort Claims Act; and/or (6) whether claimant has failed to satisfy any and all statutory conditions precedent to arbitration.

8.7.3 Binding Arbitration. Subject to and notwithstanding the limitations set forth in Article 7.7.2 above, all claims, disputes, disagreements or other matters in controversy between District and Operator arising out of or pertaining to this Agreement shall be resolved by arbitration conducted by a JAMS arbitrator identified as having expertise in public works matters and in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of JAMS closest to the Project Site. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. Notwithstanding Rule 24 of JAMS Comprehensive Arbitration Rules and Procedures, in any arbitration to resolve a dispute relating to this Agreement, the arbitrator's award shall be supported by law and substantial evidence. Subject to and notwithstanding the mediation and arbitration provisions set forth herein, all claims demands, disputes, disagreements or other matters in controversy by the Contractor as against the District seeking money or damages in any sum shall, as a condition precedent to suit including, without limitation, a demand for arbitration, be subject to the claims provisions of the California Government Code section 900, et seq.

8.7.4 Operator Continuation of Vending Machine Operations. Notwithstanding pending disputes, disagreements or other matters in controversy between the District and the Operator relating to this Agreement, pending the full and final resolution of all such pending disputes, disagreements or other matters in controversy, the Operator shall continue operations in accordance with the terms of this Agreement.

8.8 Operator Independent Contractor Status. In performing its obligations under this Agreement, the Operator is an independent contractor to the District and not an agent or representative of the District.

8.9 Entire Agreement. This Agreement sets forth the entire understanding and agreement of the Parties relating to the subject matter hereof. In the event of conflict or inconsistency between this Agreement or any provision hereof and the RFP or the RFP Response or any portions thereof, this Agreement and the provisions hereof shall

govern and control. This Agreement supersedes and replaces all prior agreements, understandings and negotiations between the Parties concerning the subject matter hereof, whether verbal or written. This Agreement and the provisions hereof shall not be modified or amended except by written instrument duly executed by authorized representatives of the District and the Operator.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date set forth above.

**“District”:**  
**Gavilan Joint Community College District**

By: \_\_\_\_\_  
Frederick E. Harris  
Vice President of Administrative Services

**“Operator”:**  
**[Operator Name]**

By: \_\_\_\_\_  
Title: \_\_\_\_\_