



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 9, 2011 REPORT NO: 11-151
ATTENTION: Budget and Finance Committee
Agenda of November 16, 2011
SUBJECT: Marketing Partnership Agreement with Rainbow Vending

REQUESTED ACTIONS:

Authorize the Mayor to enter into a Marketing Partnership Agreement with Rainbow Vending, which represents estimated revenue to the City of approximately \$870,000 based on projected product and advertising sales over five years. The Agreement is based upon a five-year term.

STAFF RECOMMENDATIONS:

Approve the requested action.

SUMMARY:

Introduction

On June 8, 1999, the City Council approved a strategic marketing plan for corporate partnerships for the City of San Diego called the Municipal Marketing Partnership Program (MMPP). On January 18, 2000, the City Council approved a Marketing Partnership Policy (Council Policy No. 000-40) to provide guidelines for the Program.

The MMPP, now known as the Corporate Partnership Program (CPP), seeks opportunities for the City to generate cash and in-kind resources from partnerships with the corporate community in order to enhance municipal services and facilities in the City.

Process Followed to Develop This Partnership

In June 2011, the CPP issued a Request for Sponsorship (RFS) for Vending Services to 17 companies as well as posting the opportunity on the CPP website. The overall objective of the RFS was to give vending companies the opportunity to develop a

marketing partnership wherein the City would receive cash from the vendor in return for marketing opportunities available through the City.

In response to the RFS, six companies indicated interest in a marketing partnership. Park and Recreation Department staff participated in the RFS process as the largest stakeholder of vending machine locations. CPP then met and negotiated with four of the six companies. Rainbow Vending was selected to be the City's Official Vending Partner based on its ability to provide the best overall benefit to the City.

Rainbow Vending Proposal

A Marketing Partnership Agreement has been negotiated between the City and Rainbow Vending and is based upon a five-year term (see Attachment A).

The benefits to the City upon entering into the Marketing Partnership Agreement with Rainbow Vending are:

1. Rainbow Vending offers the highest potential revenue from commissions on product sales and advertising.
2. Rainbow Vending offers the highest commission percentages compared to other proposals.
3. The unique advertising commissions included in the Agreement are in addition to beverage sales commissions and were not offered in other proposals.
4. Rainbow Vending is willing to expand from current locations with aesthetically pleasing enclosures in high volume areas to protect vending machines from vandalism.
5. Rainbow Vending is a San Diego-based company with positive references from three other public agencies.
6. The Agreement includes terms for installation, servicing, staff management and maintenance of machines that meet the City's goals and objectives. Rainbow Vending will replace older machines with modern, energy efficient machines.
7. Rainbow Vending provides a diverse product line including all brands which should increase sales as it will appeal to customers who are brand loyal. A Canteen Vending survey showed that exclusive beverage agreements result in a 20-25% drop in sales.

Marketing Rights Fee and Commissions

Under the proposed Agreement, Rainbow Vending will pay \$100,000 to the City in advance as guaranteed sales commissions for Year One of the Agreement (to be received in Fiscal Year 2012), based on 30% of gross sales, and more if actual commissions due exceed \$100,000 in the first year. After the sales commissions due exceed \$100,000, or after Year One, Rainbow Vending will pay the City a monthly commission of 30% of gross sales on all beverage products sold in machines at the City facilities identified in the Agreement.

Rainbow Vending will also pay the City 30% of the advertising revenue after expenses derived from advertising on the vending machines and protective enclosures. Implementation of the vending advertising program will comply with the City of San Diego's Sign Ordinance.

Projected Commissions (Calendar Year)

Year One	\$120,000*
Year Two	\$145,000
Year Three	\$180,000
Year Four	\$200,000
Year Five	\$225,000
Total	\$870,000

* Includes \$100,000 paid to the City in advance of sales in Fiscal Year 2012

Marketing Partnership Agreement

Rainbow Vending will become the Official Beverage Vending Partner of the City and will be afforded specific marketing benefits by the City. This marketing partnership applies only to beverage vending machines on City facilities identified in the Agreement; it does not prevent the City from accepting funding from or working with other beverage companies on marketing partnerships, including water, sports drinks, and soft drinks.

The proposed Agreement includes the following marketing rights and benefits:

1. The right to be designated and referred to as the "Official Beverage Vending Partner" of the City, and the right to promote this designation. This benefit does not include naming rights.
2. The right to have logo presence on the City's website.
3. The right to install and operate beverage vending machines at City facilities and locations.

4. The opportunity to sell advertising on vendfronts and vending machine enclosures within sign ordinance parameters.
5. The opportunity to develop press releases, stories, features and other publicity about the partnership for distribution to wire services, local, regional and national newspapers.
6. The right to have a representative of the CPP to work with Rainbow Vending to fulfill the rights and benefits that are listed in the Agreement.

Conclusion

The City's Corporate Partnership Program has developed a partnership with Rainbow Vending and negotiated a Marketing Partnership Agreement that will generate an estimated \$870,000 for the City of San Diego over the next five years through the sale of beverage products and advertising. Rainbow Vending will pay \$100,000 to the City in advance of sales in Fiscal Year 2012.

This Agreement further awards to Rainbow Vending the benefit and right to be designated and referred to as the "Official Beverage Vending Partner" of the City of San Diego.

FISCAL CONSIDERATIONS:

Total estimated revenue is \$870,000 over five years, depending on the total sales of beverage vending product and advertising. \$100,000 will be paid to the City in advance of sales by Rainbow Vending in Fiscal Year 2012. All funding will be deposited into the General Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

General Fund and services for residents supported by the General Fund.

Natasha Collura
Director, Strategic Partnerships

Mary Lewis
Chief Financial Officer

Attachments: A. Marketing Partnership Agreement with Rainbow Vending

Attachment A

MARKETING PARTNERSHIP AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND RAINBOW VENDING, INC.

This **Marketing Partnership Agreement** ("Agreement"), effective upon execution by authorized representatives of both parties ("Effective Date"), is made and entered into by and between the City of San Diego ("City"), with its principal place of business located at the City Administration Building, 202 C Street, San Diego, California 92101, and Rainbow Vending ("Rainbow Vending") with its principal office located at 5515 Market Street, San Diego, CA 92114 (collectively "Parties").

WHEREAS, the City has developed a Corporate Partnership Program ("CPP") to generate revenue to fund existing and additional facilities, projects, programs and activities through the development of mutually beneficial marketing partnerships between the City and a corporation or other business entity, wherein the corporation provides cash and/or in-kind goods and/or services to the City (a "Marketing Rights Fee") in exchange for access to the commercial marketing potential associated with the City ("Marketing Partnership"); and

WHEREAS, Rainbow Vending has demonstrated an interest in the CPP by submitting a proposal to provide beverage vending services and advertising/sponsorship services to the City by entering into a Marketing Partnership with the City; and

WHEREAS, the City has determined that Rainbow Vending's proposal meets the objectives of the CPP and is otherwise in the best interests of the City; and

WHEREAS, the Parties desire to enter into a Marketing Partnership Agreement,

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration; the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

Section 1. Definitions

For the purpose of this Agreement, the following terms shall have the following meanings:

- 1.1 "Advertising Expenses" means all direct out-of-pocket expenses actually incurred by Rainbow and its Subcontractor(s) in connection with procuring and installing advertising and sponsored public interest messages for Rainbow Vending's Enclosures and Signage, including but not limited to design, production, installation, labor, and travel.
- 1.2 "Advertising Net Revenue" means all advertising, sponsorship, or other revenues arising from, or in connection with displays on Rainbow Vending's Enclosures and Signage, less all Advertising Expenses.

- 1.3 “Beverages” means non-alcoholic beverages sold through Cold Drink Vending Machines at City Facilities. Beverages include carbonated beverages, isotonic (sports drinks), water, juice drinks, refrigerated teas and coffee beverages.
- 1.4 “Cold Drink Vending Machines” or “Machines” means all self-service cold drink vending machines located at Facilities and operated by or on behalf of Rainbow Vending pursuant to the terms of this Agreement. Cold Drink Vending Machines do not include fountain beverage services where packaged beverage products are dispensed either through self service or through a salesperson in a cafeteria, restaurant, snack bar, or cart setting.
- 1.5 “Enclosure” means any structure encompassing vending machines, including one or more Cold Drink Vending Machines, and including Signage on which advertising or public interest messages may be placed.
- 1.6 “Facilities” means those locations specifically listed on Exhibit A, and as it may be amended from time to time, for the placement of Cold Drink Vending Machines including, for example, City office buildings, libraries (employee break areas and possible exteriors), police and fire stations, park and recreation facilities, and pedestrian walkways in selected beach areas. Facilities do not include stadiums, theaters or amphitheaters primarily used for ticketed events, the San Diego Convention Center, City-owned golf courses, leaseholds on City property (e.g., the Zoo, Wild Animal Park, SeaWorld, museums and other leased buildings in Balboa Park), facilities operated by other public agencies (e.g., San Diego International Airport, trolley and bus stations, marinas), and cafeterias, restaurants and food and beverage concessions operated under agreement with the City. Exhibit A is attached hereto and made a part of this Agreement by this reference. Exhibit A may be amended from time to time by mutual written agreement of the parties to include or exclude specific buildings or facilities to fulfill the intent of the parties.
- 1.7 “Signage” refers to advertising sign space on Cold Drink Vending Machines and Enclosures.
- 1.8 “Subcontractor” means the contractor used by Rainbow Vending for the placement of advertising, sponsored public interest messages, and other graphic displays on Enclosures and Signage.
- 1.9 “Year” means each twelve month period beginning with the date of execution of this Agreement by the City.

Section 2. Term

- 2.1 The term of this Agreement shall commence on the date of execution by the City of this Agreement and shall continue for five (5) years (the “Term”), unless otherwise terminated as provided herein.

Section 3. Marketing Rights Fee

3.1 Payment. In consideration of the rights, benefits, and privileges granted to Rainbow Vending in this Agreement, including the installation, operation, and servicing of Cold Drink Vending Machines, Enclosures, and Signage pursuant to the terms of this Agreement, Rainbow Vending agrees to pay the City a Marketing Rights Fee consisting of a commission of 30% of the gross receipts from the sales of Beverages (“Sales Commission”) and a commission of 30% of Advertising Net Revenue (“Advertising Commission”), as follows:

3.1.1 **Sales Commission.** Rainbow Vending shall pay the first One Hundred Thousand Dollars (\$100,000) of Sales Commission to the City in advance in two payments, the first payment of \$50,000 due and payable within forty-five (45) days of execution of this Agreement, and the second payment of \$50,000 due and payable on or before June 1, 2012.

3.1.2 **Sales Reports.** Rainbow Vending shall provide sales reports to the City on or before the fifteenth of each month showing the gross receipts for the prior month and the Sales Commission due (“Sales Reports”). Once the Sales Commissions due exceed the \$100,000 paid, Rainbow Vending shall pay Sales Commission to the City on a monthly basis for the prior month’s sales, at the same time as it provides the monthly Sales Report. In no event, however, shall Rainbow Vending pay less than \$100,000 in Sales Commission to the City for the first Year.

3.1.3 **Advertising Commission.** Rainbow Vending shall, by the 25th of each January, April, July, and October, provide the City with a detailed report showing the calculation for Advertising Revenue from the prior Fiscal Quarter and the amount of Advertising Commission due, and payment to the City by check or electronic funds transfer for the Advertising Commission due.

3.1.4 **Advertising Reports.** Rainbow Vending shall require that its Subcontractor provide Rainbow Vending, on a quarterly basis by the fifteenth (15th) of each January, April, July, and October, a detailed accounting of Advertising Revenues and Advertising Expenses. Rainbow Vending shall provide such reports to the City upon request.

3.2 Inspection and Audit of Records.

3.2.1 All Machines shall have automatic sales counters that can be used for sales verification if requested by the City.

3.2.2 Rainbow Vending and its Subcontractor shall make available to the City for examination at reasonable locations within the City of San Diego, at any time during normal business hours and as often as the City deems necessary, all of the data and records with respect to Rainbow Vending’s payment obligations under this Agreement [City’s Right]. Rainbow Vending shall maintain, and require its

subcontractors to maintain, such data and records for a period of not less than four years following receipt of final payment under this Agreement, or removal of all Machines, whichever is later. Rainbow Vending shall include the City's Right as described in this Section in any agreement with its Subcontractor pertaining to this Agreement, and shall ensure that it is binding upon its Subcontractor.

Section 4. Marketing Rights and Partnership Benefits

The City shall provide Rainbow Vending the following Marketing Rights and Benefits for the Term of this Agreement:

- 4.1 Official Partner. Rainbow Vending shall have the exclusive right to be designated and referred to as the "Official Beverage Vending Partner of the City of San Diego" and to use said designation in promotional and marketing efforts including press releases, stories, features and other publicity initiated by Rainbow Vending or the City.
- 4.2 Placement of Vending Machines at City Facilities. As the City's "Official Beverage Vending Partner," Rainbow Vending shall have the right to place Cold Drink Vending Machines at City Facilities identified in Exhibit A and at such additional locations as may be agreed to by the parties, consistent with the terms of this Agreement.
- 4.3 Advertising. Rainbow Vending shall have the right to install on-premises advertising and sponsored public interest messages on Signage space on Cold Drink Vending Machines and Enclosures.
 - 4.3.1 Advertising Commission. Rainbow Vending shall pay the City a commission on all advertising revenue, as set forth in Section 3 above.
 - 4.3.2 Sign Ordinance. All advertising and sponsored messages shall comply with all applicable laws, including the City's Municipal Code and any applicable regulations.
 - 4.3.3 Signage at City Parks and Rec Centers; Sponsorship. For Signage on Machines and Enclosures at Facilities identified as subject to Section 6.6, and for sponsored public interest messages, Rainbow Vending shall establish a promotional campaign based upon topics and issues agreed upon by the City that are designed to highlight City priorities or the City's image, such as, for example, City events, public service or public interest issues, tourism, or other issues as agreed by the City. Rainbow Vending shall obtain the City's approval prior to implementation.
 - 4.3.4 Unsold Advertising Space. Rainbow Vending shall make available to the City for its use any unsold or unused Signage at no expense to the City, other than actual material and labor cost incurred by Rainbow and its Subcontractor(s). City may use such signage for public interest messages, to support public service programs, or otherwise to promote the public good or activities relevant to the location. For any unused Signage space at park and beach locations, Rainbow Vending shall install images that are complementary to the location.

- 4.3.5 **Evaluation of Program.** The Parties shall meet and evaluate the advertising and sponsorship program each Year to determine its effectiveness and continuation.
- 4.4 **Donation of Water.** As part of its promotional and marketing efforts, Rainbow Vending shall donate 500 cases of bottled water each Year to the City. The City may use such donation in any manner it chooses, including hospitality, event support, or resale.
- 4.5 **Vending Promotions.** Rainbow Vending, directly or through its sub-contractor, may offer special vending machine promotions with promotional items vended through the Cold Drink Vending Machines. Such promotions shall be conducted at no expense to the City.
- 4.6 **Promotional Materials and Prior Approval.** The City will work with Rainbow Vending to develop press releases, stories, features and other publicity about the partnership for distribution to local, regional and national newspapers and wire services. Rainbow Vending agrees to submit to the City for its prior written approval, which approval may not be unreasonably withheld, all logos, advertisements, promotional materials, promotional campaigns, product placement and appearance and any and all other materials that represent Rainbow Vending's efforts to publicize and/or promote the rights and benefits granted to it under this Agreement. Such material shall be submitted no less than five (5) business days prior to its proposed release to the public.

Section 5. Installation, Operations, and Costs

- 5.1 **Installation of Machines.** Rainbow Vending shall either acquire ownership of Cold Drink Vending Machines from the City's previous vendor or install Machines, at its option, so that a total of not less than one-hundred thirty (130) functioning and fully stocked Cold Drink Vending Machines are in operation at City Facilities within sixty to ninety (60-90) days of the Effective Date of this Agreement, including not less than one hundred (100) vend fronts available for advertising. All newly installed Cold Drink Vending Machines shall meet the most recent Energy Star ratings (described in Exhibit B attached hereto), have bill change and credit capabilities, and meet any applicable ADA requirements. Any exceptions must be approved by the City with a mutually agreed upon timeline for replacement.
- 5.2 **Infrastructure.** Rainbow Vending shall use existing infrastructure (foundation pads and electrical hookup) for the installation of Cold Drink Vending Machines. Rainbow Vending may make such repairs as may be necessary for the proper installation of the Machines. The City shall not have any responsibility to improve any infrastructure which may be necessary for the installation of Machines under this Agreement. Rainbow Vending shall be permitted to use City utilities (e.g., electricity) to operate the Cold Drink Vending Machines and Enclosures. Rainbow Vending shall reimburse the City for the cost of such utilities upon the receipt of an invoice from the City for such costs, in an amount not to exceed one thousand dollars annually for up to 130 Machines. The Parties may mutually agree to increase this amount as the number of Machines increases.

Rainbow Vending shall obtain, wherever necessary, the appropriate permits related to vending machine placement.

- 5.3 Ownership. All Cold Drink Vending Machines subject to this Agreement, and all monies and products located in such Cold Drink Vending Machines at any given time, shall at all times remain the sole property of Rainbow Vending and/or its affiliates.
- 5.4 Operating Costs. Rainbow Vending shall be solely responsible for any costs related to installing, operating, and servicing the Cold Drink Vending Machines and Enclosures at City Facilities.
- 5.5 Vandalism, Theft, or Other Damage. Rainbow Vending assumes responsibility for all damage to Machines caused by neglect, vandalism or any other cause outside the City's control, as well as losses due to theft. Rainbow Vending shall, in its discretion and at its cost, install enclosures or other protective devices to prevent vandalism or theft. Rainbow Vending may, at its discretion, remove Machines due to repeated incidents of vandalism or theft, however, in no event shall the number of installed and functioning Machines fall below the minimum number required by this Agreement.
- 5.6 Maintenance. Rainbow Vending shall use its reasonable efforts to keep the Cold Drink Vending Machines and Enclosures in good working order and condition at all times during the Term. Rainbow Vending shall perform regular maintenance and repair of Cold Drink Vending Machines and Enclosures, at its cost. Rainbow Vending will respond within 3 business days to calls regarding defective and/or inoperable machines. The City shall not repair, service, maintain, replace, move, remove, stock, or access any Cold Drink Vending Machines or Enclosures.
- 5.7 Existing Concessions. This Agreement does not prevent or prohibit the City from using other providers of vending services for existing concessions at locations not included in Exhibit A.
- 5.8 Additional Facilities. It is the intent of the parties to increase the number of Facilities and installed Machines throughout the term of this Agreement. Accordingly, upon the reasonable request of either party, the parties shall review and amend Exhibit A to add or take away from the list of Facilities covered by this Agreement, provided that the overall number of installed, functioning, and stocked machines shall increase as a result of the amendment.
- 5.9 Vending Prices. Beverages shall be offered for sale at market prices, as determined by Rainbow Vending. Proposed vend prices are listed in Exhibit C, attached hereto, and subject to reasonable change from time to time based on market pricing.
- 5.10 Vending Product Selection. For Cold Drink Vending Machines located in City parks and recreation centers that attract a significant number of children (as identified by the City on Exhibit A), at least half of the product selection shall be healthy beverage choices, as determined and approved by the City through its Park and Recreation Director.

- 5.11 Tax Liability. San Diego County currently has in effect a sales tax equal to 7.75% on all sales pertaining to food and other goods and merchandise. This tax may fluctuate over the term of the Agreement. Rainbow Vending is responsible for collecting and remitting all such taxes. A possessory interest subject to property taxation may be created by virtue of the rights granted to Rainbow Vending pursuant to the terms of this Agreement and Rainbow Vending's acceptance thereof. In the event a possessory interest is created, Rainbow Vending shall pay all such possessory interest taxes. The City shall not be liable for the payment of any such sales or possessory interest taxes.

Section 6. Intellectual Property

- 6.1 Licensing. The City and Rainbow Vending shall each retain ownership of, and all right, title and interest in and to, their respective intellectual property and no license therein, whether expressed or implied, is granted by this Agreement. To the extent the parties wish to grant to the other rights or interests in intellectual property, separate licensing agreements on mutually acceptable terms shall be executed.
- 6.2 Use of City Name and Logo. Rainbow Vending shall use the City's name, seal, logo, and trademarks (collectively, "City's Identifiers") only as set forth in this Agreement, for the purpose of carrying out the terms of this Agreement, and not for any other purpose. Any use other than that specifically provided for by this Agreement shall require the prior written consent and approval of City. Rainbow Vending shall not make use of the City's name, seal, logo, trademarks, or any other identifiers in any manner that would bring City, or any of its respective agents, representatives, employees or contractors into public disrepute, contempt, scorn or ridicule or tend to shock, insult or offend the community, public morals or decency. Rainbow Vending shall not use City's Identifiers to incur any obligation or indebtedness on behalf of City, or to hold itself out as being or representing City. The obligations of Rainbow Vending under this paragraph will survive expiration or termination of this Agreement.
- 6.3 Use of Rainbow Vending Name and Logo. City shall use Rainbow Vending's name, seal, logo, and trademarks (collectively, "Rainbow Vending Identifiers") only as set forth in this Agreement and the Vending Agreement, for the purpose of carrying out this Agreement and the Vending Agreement, and not for any other purpose. Any use other than that specifically provided for by this Agreement or the Vending Agreement shall require the prior written consent and approval of Rainbow Vending. City shall not make use of Rainbow Vending's name, seal, logo, trademarks, or any other identifiers in any manner that would bring Rainbow Vending, or any of its respective agents, representatives, employees or contractors into public disrepute, contempt, scorn or ridicule or tend to shock, insult or offend the community, public morals or decency. City shall not use Rainbow Vending Identifiers to incur any obligation or indebtedness on behalf of Rainbow Vending, or to hold itself out as being or representing Rainbow Vending. The obligations of City under this paragraph will survive expiration or termination of this Agreement.

Section 7. Compliance with City Contracting Laws

- 7.1 Americans with Disabilities Act. Rainbow Vending agrees to comply with Council Policy 100-04, which establishes that all City contractors, including but not limited to construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act. Council Policy 100-04 is by this reference incorporated into this Agreement.
- 7.2 Drug Free Workplace. Rainbow Vending agrees to comply with Council Policy 100-17 that requires all City construction contractors, consultants, grantees and providers of services to provide a drug-free workplace for the performance of work done in connection with a contract held by the City. Council Policy 100-17 is by this reference incorporated into this Agreement.
- 7.3 Equal Employment Opportunity Outreach Program. Rainbow Vending shall comply with the requirements of the City's Equal Employment Opportunity Outreach Program as described in San Diego Municipal Code (SDMC) sections 22.2701 through 22.2708, and shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Rainbow Vending shall provide equal opportunity in all employment practices. Rainbow Vending shall ensure that its subcontractors comply with the City's Equal Employment Opportunity Outreach Program requirements. Nothing in this Section shall be interpreted to hold Rainbow Vending liable for any discriminatory practice of its subcontractors.
- 7.4 Non-Discrimination in Contracting Ordinance. Rainbow Vending shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Rainbow Vending shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Rainbow Vending understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Rainbow Vending and any subcontractors, vendors, and suppliers shall contain this language.
- 7.5 Compliance Investigations. Upon the City's request, Rainbow Vending agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, vendors and suppliers that Contractor has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Rainbow Vending further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance as described in SDMC sections 22.3501 through 22.3517. Rainbow Vending understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against it up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Rainbow Vending further understands and agrees that the

procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of said Nondiscrimination in Contracting Ordinance.

- 7.6 Equal Benefits Ordinance. This Agreement is subject to City's Equal Benefits Ordinance (SDMC §§ 22.4301 -22.4308) requiring that the City contract only with contractors offering the same employment benefits to employees with spouses and employees with domestic partners. Rainbow Vending certifies that it will: provide and maintain equal benefits as defined in SDMC § 22.4302 for the duration of the Agreement; notify employees of the availability of equal benefits at the time of hire and during open enrollment periods; post notice of the availability of equal benefits in an area frequented by employees; and provide City access to documents and records demonstrating compliance with the Ordinance. Failure to maintain equal benefits is a breach of this Agreement.

Section 8. Insurance

- 8.1 Insurance. Rainbow Vending shall maintain, at its own expense, the following types of insurance coverage during the Term, including any renewal or extension, of the Agreement:
- 8.1.1 Commercial General Liability Insurance ("CGL") written on an occurrence basis which shall cover liability arising from any and all personal injury or property damage in the amount of at least one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - 8.1.2 Commercial Automobile Liability Insurance for all of the Rainbow Vending's automobiles, including owned, hired or non-owned automobiles ["any auto"]. Rainbow Vending shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, for bodily injury and property damage for a combined single limit of one million dollars (\$1,000,000) per occurrence.
 - 8.1.3 Worker's Compensation Coverage for all of Rainbow Vending's employees who are subject to the Agreement and to the extent required by applicable state or federal law, Rainbow Vending shall keep in full force and effect, a Worker's Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employer's liability coverage, and Rainbow Vending shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials (if applicable), officers, employees, agents or representatives.
- 8.2 Insurer Requirements. All insurance required by the express provision of the Agreement shall be carried only by insurers rated at least "A-, VI" or better by the current A.M. Best

Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California, is shown on the current List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meets the rating requirements.

- 8.3 Coverage. This insurance shall cover all of Rainbow Vending's employees engaged in the performance of the Agreement. Rainbow Vending shall require that all its subcontractors engaged in the performance of the Agreement maintain similar levels and limits of insurance coverage.
- 8.4 Additional Insured. Rainbow Vending shall name the City as an additional insured on all general and automobile liability policies required herein. The policies shall be primary and non-contributory to any insurance, as it relates to the City's operations, that may be carried by the City, as reflected in a certificate, which shall be submitted to the City.
- 8.5 Certificates. Rainbow Vending shall, within ten (10) days of execution of the Agreement, furnish the City with certificates of insurance for coverage as required herein. Companies writing the insurance under this article shall be licensed to do business by the State of California. All certificates for each insurance policy required by this Article shall be signed by a person authorized by that insurer.
- 8.6 Notice of Cancellation. The certificates shall provide that thirty (30) days prior written notice of cancellation of the insurance to which the certificates relate shall be given to the City.

Section 9. Indemnification

- 9.1 To the extent allowable by law, City agrees to indemnify and hold harmless Rainbow Vending, its officers, directors, agents, and employees, from and against any and all third party claims, demands, obligations, causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including the payment of reasonable attorneys fees and disbursements), arising out of: (1) the failure of City, its employees or agents, to comply with the terms and conditions of the Agreement; (2) the negligent acts or omissions of City, its employees, agents, or subcontractors; (3) Rainbow Vending's use of City's Marks as authorized by the Agreement; or (4) the services performed or actions taken by City, its employees or agents, in connection with the Agreement.
- 9.2 To the extent allowable by law, Rainbow Vending agrees to indemnify, defend, and hold harmless City, its officers, directors, agents and employees from and against any and all third party claims, demands, obligations, causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including the payment of reasonable attorney fees and disbursements), arising out of: (1) the failure of Rainbow Vending, its employees or agents, to comply with the terms and conditions of the Agreement; (2) the negligent acts or omissions of Rainbow Vending, its employees, agents, or subcontractors, (3) City's use of Rainbow Vending's

Marks as authorized by the Agreement; or (4) the services performed or actions taken by Rainbow Vending, its employees or agents, in connection with the Agreement.

Section 10. Default; Remedies

- 10.1 Event of Default. The following shall constitute an Event of Default (“Event of Default”) under this Agreement regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:
- (1) Rainbow Vending fails to cause to be carried and maintained the insurance required by this Agreement and fails to immediately remedy such failure within ten (10) days of receipt of written notice thereof from the City;
 - (2) Either party fails to comply with any material term, condition, or obligation of this Agreement and such failure continues unremedied for a period of thirty (30) days after the receipt of written notice thereof from the nondefaulting party; or
 - (3) Either party commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief;
 - (4) Either party commits an act, which brings its name into disrepute, or otherwise substantially diminishes the value of the marketing partnership association for the other party.
- 10.2 Declaration of Default. Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the nondefaulting party may declare, at its option, this Agreement to be in default and: (1) if the Event of Default is a filing under Section 10.1(3) hereof, may immediately terminate this Agreement without any liability whatsoever; or (2) proceed under the Alternative Dispute Resolution procedures set forth in Section 10.4 hereof.
- 10.3 Continued Payment. Rainbow Vending shall pay Sales and Advertising Commissions to the City for as long as Machines are operating on City property, even if this Agreement is in dispute or not in effect.
- 10.4 Dispute Resolution. If a dispute arises out of, or relates to the Agreement, or the breach thereof, and if said dispute cannot be settled through negotiations, the Parties agree to first endeavor to settle the dispute in good faith, using mandatory non-binding mediation administered by a neutral professional mediator affiliated with and under the rules of the National Dispute Resolution Center (“NDRC”) or JAMS, before having recourse in a court of law.
- 10.4.1 Any such mediation shall be held in San Diego, California. The Parties agree to select a mediator from NDRC’s or JAM’s panel of approved neutrals.

10.4.2 The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

10.4.3 Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

10.4.4. In the event that a dispute cannot be resolved in the manner described above, the Parties agree to waive any and all rights to jury trial.

Section 11. Termination for Improper Consideration

11.1 The City may, by written notice to Rainbow Vending, immediately terminate the right of Rainbow Vending to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Rainbow Vending, either directly or through an intermediary, to any City officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment for extension of the Agreement or the making of any determinations with respect to Rainbow Vending's performance pursuant to the Agreement. In the event of such termination, the City shall be entitled to pursue the same remedies against Rainbow Vending as it could pursue in the event of default by Rainbow Vending.

11.2 Rainbow Vending shall immediately report any attempt by a City officer or employee to solicit such improper consideration. The report shall be made to the Director of City's Personnel Department.

11.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

Section 12. Limitation on Liability

12.1 Neither Party shall be liable to the other Party for any act or omission to the extent not attributable to its personnel. Notwithstanding anything in the Agreement to the contrary, in no event shall the cumulative liability for direct damages of either Party to the other Party, whether in contract or in tort, exceed the amount of one hundred thousand dollars (\$100,000.00) per Year of the Agreement. Furthermore, in no event shall either Party be liable for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused, which are incurred by the other Party, its employees, subcontractors, and/or agents, or any third party, arising out of or in connection with the Agreement or the performance or breach thereof, even if such Party has been advised of the claim or potential claim or of the possibility of such damages. City shall have no

liability whatsoever for interruptions or defects in website links from City Websites to the Rainbow Vending Website, except if caused by City's willful misconduct and resulting in injury to the Rainbow Vending website.

Section 13. Miscellaneous

13.1 Notices. In all cases where written notice is required under the Agreement, such notice shall be given at the respective addresses of the parties as set forth below, unless notification of a change of address is given in writing. Notice shall be sent by registered or certified mail, by a nationally recognized courier service, or by personal service, and shall be effective upon receipt. The addresses for notice and agents for service of process are:

City: Corporate Partnership Program
Attn: Natasha Collura, Director
The City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
Phone: 619-236-7002

And to: Office of the City Attorney
Attn: Carrie Gleeson
The City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Phone: 619-236-6220

And to: Rainbow Vending
Attn. Mark McDonald
5515 Market Street
San Diego, CA 92114
Phone: 619-527-1900

13.2 Non-Assignment. Neither Party may assign its rights or delegate its duties under the Agreement to any other party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, except that Rainbow Vending may assign the Agreement to: (a) any parent, subsidiary or Affiliate entity; or (b) a successor in interest of all or substantially all of the assets, stocks or business of a Party to which the Agreement pertains, so long as such assignee possesses the financial and operational capabilities to perform the Agreement and agrees to assume and fully discharge all of the duties and further obligations of the assignor arising under the Agreement. Subject to the provisions of this section, the Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties hereto. However, any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of the Agreement. In no event shall any putative assignment create a contractual relationship with the putative assignee.

- 13.3 Independent Contractors. Rainbow Vending and any subcontractors employed by Rainbow Vending are and shall be deemed to be independent contractors and not agents of the City. Any provisions of the Agreement that may appear to give the City any right to direct Rainbow Vending concerning the details of operating the Marketing Partnership, or to exercise any control over such performance, shall mean only that Rainbow Vending shall follow the direction of the City concerning the end results of the performance.
- 13.4 Compliance with Controlling Law. Rainbow Vending shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to the Agreement. In addition, Rainbow Vending shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 13.5 Jurisdiction and Venue. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this Agreement shall be in the County of San Diego, State of California.
- 13.6 Integration. The Agreement and the exhibits and references incorporated into the Agreement fully express all understandings of the Parties concerning the matters covered in the Agreement. No change, alteration, or modification of the terms or conditions of the Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties and an amendment to the Agreement agreed to by both Parties. All prior negotiations and agreements concerning the subject matter hereof are merged into the Agreement.
- 13.7 Counterparts. The Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.
- 13.8 No Waiver. No failure of either the City or Rainbow Vending to insist upon the strict performance by the other of any covenant, term or condition of the Agreement, nor any failure to exercise any right or remedy upon a breach of any covenant, term, or condition of the Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter the Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 13.9 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of the Agreement, and the decision of whether or not to seek advice of counsel with respect to the Agreement is a decision which is the sole responsibility of each Party. The Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

13.10 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the City harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to City Council Resolution _____, and by Rainbow Vending, Inc.

THE CITY OF SAN DIEGO

By: _____
Mary Lewis
Chief Financial Officer

Date: _____

I hereby certify that I can legally bind Rainbow Vending, Inc. and that I have read all of this Agreement.

RAINBOW VENDING, INC.

By: _____

Name: _____

Title: _____

Date: _____

I hereby approve the form and legality of the foregoing Agreement this _____ day of _____, 2011.

JAN I. GOLDSMITH, City Attorney

By: _____
Carrie Gleeson
Deputy City Attorney

EXHIBIT A
LIST OF FACILITIES

[See Attached]

Exhibit A

	Site:	Address:	Zip Code:	Machine Location (Beverages*):
1	P.U.D - Employee Training & Development Center	5510 Kiowa Dr. (La Mesa)	91942	1 Beverage
2	P.U.D. - Alvarado Lab	5530 Kiowa Dr. (La Mesa)	91942	2 Beverage
3	P.U.D. - Alvarado Water Treatment Plant	5540 Kiowa Dr. (La Mesa)	91942	1 Beverage
4	P.U.D. - Alvarado Filtration Plant	5550 Kiowa Dr. (La Mesa)	91942	1 Beverage
5	La Jolla	615 Prospect St.	92037	Outside near Ladies Room
6	Police (Northern Division)	4275 Eastgate Mall	92037	2 in Breakroom
7	Torrey Pines Golf Course	11318 N Torrey Pines Rd.	92037	N Mountain Building Breakroom
8	Fire (Training NTC)	Camp Nimitz	92101	Fire Train, Bottom Stairs in Building 608
9	City Council Offices	202 C St.	92101	10th Floor Breakroom
10	Mayors Office	202 C St.	92101	11th Floor Breakroom
11	Print Shop	202 C St.	92101	Breakroom
12	Public Utilities Department (P.U.D.)	600 B St.	92101	11th Floor Breakroom 1 Beverage
13	Central Library	820 E St.	92101	2 in 3rd Floor Breakroom
14	Fire Prevention	1010 2nd Ave.	92101	3rd Floor East, 8th floor and West Tower
15	City Attorney (Civil)	1200 3rd Ave.	92101	11th Floor Lounge
16	City Attorney (Civil)	1200 3rd Ave.	92101	12th Floor Hall
17	City Attorney (Civil)	1200 3rd Ave.	92101	15th Floor Lounge
18	City Attorney (Civil)	1200 3rd Ave.	92101	16th Floor
19	City Attorney (Criminal)	1200 3rd Ave.	92101	7th Floor
20	Risk Management	1200 3rd Ave.	92101	10th Floor
21	Development Services	1222 1st Ave.	92101	1st Floor
22	Developmental Services	1222 1st Ave.	92101	3rd Floor near elevators
23	Developmental Services	1222 1st Ave.	92101	5th Floor
24	Transportation (Parking Management)	1250 6th Ave.	92101	1st Floor Mail Room
25	Morley Field RC (Municipal Gym)*	2111 Pan American Plz.	92101	Gym
26	Morley Field RC (Municipal Gym)*	2111 Pan American Plz.	92101	Gatorade near Aquatic Machine
27	Municipal Gym	2111 Pan American Plz.	92101	Lobby
28	Balboa Park Activity Center*	2145 Park Blvd.	92101	Lobby
29	Balboa Park Admin. Building	2125 Park Blvd., 2nd Floor	92101	2nd Floor Elevator
30	Morley Field RC (BP Activity)*	2145 Park Blvd.	92101	2 inside Activity Center
31	Morley Field RC (BP Activity)*	2145 Park Blvd.	92101	Inside South Entrance
32	Morley Field RC (BP Activity)*	2145 Park Blvd.	92101	Right side of Southwest Door
33	War Memorial Building	3325 Zoo Dr.	92101	Lobby
34	P.U.D. - Pump Station 2	4077 North Harbor Drive	92101	1 Beverage (AA Vending)
35	Mountain View REC (Dennis Allen Park)*	Boundary St. & J St.	92102	Next to snack machine
36	Police (Central Division)	2501 Imperial Ave.	92102	Kitchen
37	Balboa Park Golf Complex	2610 Golf Course Dr.	92102	Outside near Starters booth and next to Halfway House
38	Read (Mount Hope)	3751 Market St.	92102	Inside Cemetery Office
39	Police (Auto Maintenance Division)	3940 Federal Blvd.	92102	Breakroom 2nd Floor
40	Police (Pistol Range)	4008 Federal Blvd.	92102	Pistol Range
41	Police (Swat and Canine Admin.)	4240 Federal Blvd.	92102	Outside of Building
42	Chollas Operations Center (Transportation & Storm Water)	2740 Caminito Chollas	92105	Outside North
43	Purchasing	2773 Caminito Chollas	92105	Supply Building Back Dock
44	P.U.D. - Chollas Water Operations	2797 Caminito Chollas	92105	2 Beverage
45	Colina Del Sol RC (Ster Pal)*	4110 54th St.	92105	Outside
46	Police (Mid-City Division)	4310 Landis St.	92105	2 in Lobby and Breakroom
47	Ocean Beach RC (Cabrillo RC)*	3051 Canon St.	92106	Outside Center Area 1
48	Robb Field RC (REC Center Building)*	2525 Bacon St.	92107	Csd Outside Office
49	Robb Field RC (Skateboard Park)*	2525 Bacon St.	92107	Skate Park 2
50	Ocean Beach RC (REC Center)*	4726 Santa Monica Ave.	92107	Inside near Gym 1 bev

	Site:	Address:	Zip Code:	Machine Location (Beverages*):
51	MB RC & Community Council (Santa Clara)*	1008 Santa Clara Pl.	92109	Outside near West Entrance of Rec
52	Pacific Beach RC*	1405 Diamond St.	92109	Inside Hallway South West Corner of Building
53	Lifeguard (Headquarters)	2581 Quivira Ct.	92109	Outside Administration Building
54	Tecolote	4675 Tecolote Rd.	92110	Game Room east wall
55	Police (Western Division)	5215 Gaines St.	92110	2 inside Building
56	Kearny Mesa RC (REC Center)*	3170 Armstrong St.	92111	Outside near Rec Center Front Entrance and Inside near Main Office
57	Lindbergh Neighborhood Park	4141 Ashford St.	92111	Comfort Station
58	Environmental Services (Miramar Landfill)	5180 Convoy St.	92111	Top/Hill Operations Office
59	Environmental Services (Miramar Landfill)	5180 Convoy St.	92111	Front Gate Fee Both
60	P.U.D. - Metro Biosolids Center(MBC)	5240 Convoy St.	92111	1 Beverage
61	Linda Vista RC (Linda Vista REC Center)*	7064 Levant St.	92111	Outside of Gym on Westside
62	Willie Henderson RC (REC Center)*	1035 S 45th St.	92113	Game Room
63	P.U.D. - Pump Station 1	3550 East Harbor Dr.	92113	1 Beverage(AA Vending)
64	Southcrest RC*	4149 Newton Ave.	92113	Outside east, Lobby
65	Encanto Park RC*	6508 Wunderlin Ave.*	92114	In Lobby
66	Martin Luther King Jr. (REC Center)*	6401 Skyline Dr.	92114	In Lobby
67	So Clairemont RC (REC Center)*	3605 Clairemont Dr.	92117	Pepsi Machine in Lobby
68	Transportation (Equipment)	3775 Morena Blvd.	92117	Inside Fleet Warehouse
69	Water (Operations)	3775 Morena Blvd.	92117	Utility System Breakroom
70	North Clairemont RC (Cadman REC Center)*	4280 Avati Dr.	92117	Pepsi Machine Outside of Game Room
71	North Clairemont RC (N Clairemont REC Center)*	4421 Bannock Ave.	92117	Outside Main Office (1 Gatorade/1 Pepsi)
72	San Carlos RC*	6445 Lake Badin Ave.	92119	Inside Rec Center (Aquatics)
73	Allied Gardens RC (REC Center)*	5155 Greenbrier Ave.	92120	Game Room
74	Fleet Services	8353 Miramar Pl.	92121	2 Outside Locker Room
75	Fleet Services	8353 Miramar Pl.	92121	Maintenance Garage near Room 90
76	P.U.D. - Pump Station 64	10745 Roselle Street	92121	1 Beverage (AA Vending)
77	Standley RC (REC Center)*	3585 Governor Dr.	92122	2 in Rec Center Vending Cage
78	Standley RC (REC Center)*	3585 Governor Dr.	92122	cage
79	Standley RC (Swanson Pool)*	3585 Governor Dr.	92122	Lobby
80	Standley Park Tennis Club	3585 Governor Drive	92123	Request a Water only machine/near tennis courts, not sure where power source would be. May be okay with non-soda (Gatorade) type drinks. Concern is sticky courts etc...
81	Doyle RC*	8175 Regents Rd.	92122	2 in Lobby in Entrance and Hallway
82	Nobel (Park and REC Center)*	8810 Judicial Dr.	92122	Inside Rec Center
83	Montgomery Field (Airport)	3750 John J Montgomery Dr.	92123	Administration Building
84	Serra Mesa RC (RC Center)*	9020 Village Glen Dr.	92123	Game Room
85	P.U.D. - WW Collections, MOC I	9150 Topaz Way	92123	1 Beverage (AA Vending)
86	P.U.D. - Headquarters, MOC II, 1st Floor	9192 Topaz Way	92123	1st Floor, 1 Beverage
87	P.U.D. - Headquarters, MOC II, 2nd Floor	9192 Topaz Way	92123	2nd Floor, 1 Beverage
88	Police (Eastern Division)	9225 Aero Dr.	92123	Breakroom (Aquatics), Field Engineers not shown
89	Police (Traffic Division)	9265 Aero Dr.	92123	Lunchroom
90	Environmental Services (Administration)	9601 Ridgehaven Ct.	92123	1 Beverage (AA Vending)
91	Tierrasanta RC (REC Center)*	11220 Clairemont Mesa Blvd.	92124	Rec Center
92	Lopez Ridge REC Center*	7245 Calle Cristobal	92126	Outside near front door
93	Mira Mesa RC*	8575 New Salem St.	92126	1 Inside, 1 Outside
94	Rancho Bernardo RC (REC Center)*	18448 W Bernardo Dr.	92127	Gym
95	Carmel Mountain RC (REC Center)*	10152 Rancho Carmel Dr.	92128	Lobby
96	Hilltop (Rancho Penasquitos RC)*	9711 Oviedo Way	92129	Courtyard
97	Canyonside	12350 Black Mountain Rd.	92129	Lobby and West Courtyard
98	Police (Northeastern Division)	13396 Salmon River Rd.	92129	Breakroom

	Site:	Address:	Zip Code:	Machine Location (Beverages*):
99	Carmel Valley	3777 Townsgate Dr.	92130	Lobby and Outside
100	Carmel Valley RC *	3777 Townsgate Dr.	92130	Upper Level Gator/Tennis Courts 2
101	Ocean Air	4770 Fairportt	92130	Lobby
102	Ocean Air REC Center*	4770 Fairport Way	92130	Inside Rec Center
103	Police (Northwestern Division)	12592 El Camino Real	92130	Break Room
104	Carmel Valley Skate Park	12600 El Camino Real	92130	Outside
105	Scripps Ranch RC (REC Center)*	11454 Blue Cypress Dr.	92131	Front Lobby
106	Penn Athletic Field REC Center*	2550 Duck Dr.	92139	Inside near South door and Outside near south door,
107	Paradise Hills REC Center*	6610 Potomac St.	92139	Lobby
108	Police (Southern Division)	1120 27th St.	92154	Break Room (Aquatics)
109	South Bay RC (Robert Egger Park)*	1885 Coronado Ave.	92154	Outside Gym Wall and Courtyard Patio (Aquatics)
110	P.U.D. - South Bay Water Reclamation	2411 Dairy Mart Rd.	92154	Breakroom, 1 Beverage
111	Otay Mesa RC (Mont Waller Park)*	3020 Coronado Ave.	92154	Basketball Outside Court and Lobby
112	San Ysidro RC (Community Center)*	179 Diza Rd.	92173	Inside Rec Center Lobby
113	San Ysidro RC (Chavez Center)*	455 Sycamore Rd.	92173	Inside Rec and Lobby
114	Mountain View Teen Center*	551 S. 40 Street	92113	
115	Rose Canyon Operations	8405 New Salem St.	92126	
116	Miramar Water Treatment	10710 Scripps Lake Dr.	92131	
117	P.U.D. - MOC III	9191 Kearny Villa Court	92123	
118	P.U.D. - North City Water Reclamation	4949 Eastgate Mall	92121	
119	P.U.D. - Point Loma Wastewater Treatment	1902 Gatchell Road	92106	

1) Section 5.10 from the Marketing Agreement applies to locations with an asterisk.

2) Verification of sites are still in progress and City will work with Vendor to identify desired locations.

EXHIBIT B

ENERGY STAR



ENERGY STAR qualified new and rebuilt refrigerated beverage vending machines can save building and business owners more than 1,700 kWh/year, or \$150 annually on utility bills.

Earning the ENERGY STAR means products meet strict energy efficiency guidelines set by the US Environmental Protection Agency and the Department of Energy.

- New and rebuilt refrigerated beverage vending machines that have earned the ENERGY STAR are 50% more energy-efficient than standard machine models
- ENERGY STAR qualified new and rebuilt vending machines incorporate more efficient compressors, fan motors, and lighting systems to keep beverages just as cold and the machine visible while using less energy
- ENERGY STAR qualified new and rebuilt machines come with a low power mode option that allows the machine to be placed in low-energy lighting and/or low-energy refrigeration states during times of inactivity

EXHIBIT C

BEVERAGE VENDING PRICE LIST

12oz Can	
Price Year 1	\$0.75
Year 2	\$0.85
Year 3	\$1.00
Year 4	\$1.00
Year 5	\$1.00
20oz Can	
Price Year 1	\$1.25
Year 2	\$1.35
Year 3	\$1.50
Year 4	\$1.50
Year 5	\$1.50
Water/Sports Drinks	
Price Year 1	\$1.50
Year 2	\$1.50
Year 3	\$1.75
Year 4	\$1.75
Year 5	\$1.75
Energy Drinks	
Price Year 1	\$2.50
Year 2	\$2.75
Year 3	\$3.00
Year 4	\$3.00
Year 5	\$3.00