

Council Meeting of
September 11, 2007

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager – Approval of a Request for Proposal for Beverage Vending Services

RECOMMENDATION

The City Manager recommends that the City Council approve a Request for Proposal (RFP) for beverage vending services.

Funding

Not applicable.

BACKGROUND

On February 10, 2004, Your Honorable Body approved a contract for beverage vending services between Pacific Snapple Distributors, 7up-Royal Crown Bottling Company, and the City of Torrance. The term of the contract was from February 10, 2004 through February 10, 2011 with an annual fee of \$140,000 paid to City for each of the seven years of the contract.

The contract also allowed for a third year re-evaluation of terms of agreement in February 2007, if sales were not meeting financial investment. In May of 2006, Cadbury-Schweppes (parent company of Snapple) purchased the 7up distributorship, and in June 2007, the City terminated its contract with Snapple.

ANALYSIS

Since the termination of the contract, Snapple pulled out all of its beverage vending machines as of June 15, 2007. In the interim, to avoid not having any beverage vending machines, the City developed a temporary short-term agreement with G & G Vending Services to provide beverage vending machines that expires on November 17, 2007. G & G Vending currently provides the City with non-beverage vending machines and has worked with us in the past to provide beverage vending machines. The beverage vending machines were placed at limited locations throughout the City Hall, City Yard, the Police Department, and several of the City parks. The temporary short-term agreement allowed staff the opportunity to develop the attached comprehensive Request for Proposal (RFP).

The new Request for Proposal aims to provide adequate beverage vending services throughout City-owned properties while maintaining minimum guaranteed cash revenue per month, plus a

percentage of monthly gross sales. In an effort to reduce electricity consumption, the RFP requires all vending machines to be installed with energy efficient devices.

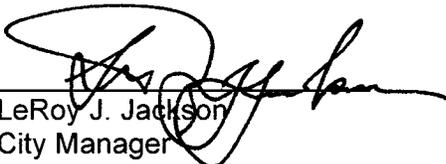
Finally, the new RFP allows for promotional/advertising opportunities with the contractor at City sponsored events. The City is also requesting from the contractor discount pricing options for its products.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By 
Aram Chaparyan
Assistant to the City Manager

CONCUR:


LeRoy J. Jackson
City Manager

Attachments: A) Request for Proposal (RFP)
B) Contract Services Agreement

RFP No. B2007-

Request for Proposal (RFP)

For Cold Beverage Vending Machine Services

RFP SUBMITTAL INFORMATION

PLACE: CITY OF TORRANCE
Office of the City Clerk
3031 Torrance Blvd.
Torrance, CA 90503

DEADLINE: 2:00 P.M.

DATE: ***, 2007

The **ORIGINAL, PLUS TWO (2) COPIES** of the Proposer's Response (Section III of this document) must be submitted in a sealed envelope and marked with the RFP number and title

RFP RESPONSES MAY BE MAILED OR HAND DELIVERED. NO FAXED RFPSS WILL BE ACCEPTED. LATE RFPs WILL NOT BE ACCEPTED.

All responses must include the following components:

- Proposer's Response (Section III of this document). You must submit your response on the forms provided. (If additional space is required, please attach additional pages.)
- Proposer's Affidavit (Attachment 1)
- **Upon award of contract, proof of Insurance, as indicated in the terms and conditions of this RFP document, must be submitted to the City Clerk.**

Any questions regarding this Request for Proposal should be directed to:

Aram Chaparyan
Assistant to the City Manager
310-618-5880

RFP No. B2007-

Request for Proposal (RFP)

For Cold Beverage Vending Machine Services

SECTION I RFP INSTRUCTIONS AND INFORMATION

Notice is hereby given that sealed proposals will be received in the office of the City Clerk, City Hall, 3031 Torrance Boulevard, Torrance, CA, until 2:00 p.m. on Thursday, ***, 2007.

An original and two copies of each proposal must be submitted in a sealed envelope and clearly marked: RFP No. B2007-*** for Cold Beverage Vending Machine Services.

Definitions:

The following meanings are attached to the following defined words when used in these specifications and the purchase agreement. The word "City" means the City of Torrance, California. The word "Proposer" or "Vendor" or "Contractor" means the person, firm, or corporation submitting a proposal on these specifications or any part thereof.

The following meanings are attached to the following defined words when used in these specifications and purchase agreement. The word "purchase agreement", "contract", "purchase order", "blanket purchase order" means the contractual agreement between the vendor and the City of Torrance for the purchase of goods and/or services.

RFP Form:

The RFP response must be made on the form provided for that purpose, enclosed in a sealed envelope, and marked RFP No. B2007-*** for Cold Beverage Vending Machine Services "and addressed to the City Clerk, City of Torrance, 3031 Torrance CA. 90503.

If the proposal is made by an individual, it must be signed by that individual, and an address, telephone (and fax number if available) must be given. If made by a business entity, it must be signed by the person(s) authorized to execute agreements and bind the entity to contracts. A full business address, telephone (and fax number if available) must be given. No telegraphic, fax or telephonic proposal will be considered.

Blank spaces in the proposal form must be filled in, using ink, indelible pencil, or typewriter and the text of the RFP form must not be changed. No additions to the form may be made. Any unauthorized conditions, limitations, or provisos attached to a RFP will render it informal and may cause its rejection. Alterations by erasure or interlineations must be explained or noted in the RFP form over the signature of the Proposer.

Reservation:

The City reserves the right to revise or amend these specifications prior to the date set for opening RFPs. Revisions and amendments, if any, will be announced by an addendum to this RFP. If the revisions require additional time to enable Proposers to respond, the City may postpone the opening date accordingly. In such case, the addendum will include an announcement of the new opening date.

All addenda must be attached to the proposal. Failure to attach any addendum may render the proposal non-responsive and cause it to be rejected.

The City Council reserves the right to reject any and all proposals received, to take all proposals under advisement for a period not to exceed ninety (90) days after the date of the opening, to waive any informality on any proposal, and to be the sole judge of the relative merits of the material and or service mentioned in the respective proposals received. The City reserves the right to reject any proposal not accompanied with all data or information required.

This Request for Proposal (RFP) does not commit the City to award a contract or to pay any cost incurred in the preparation of a proposal. All responses to this RFP document become the property of the City of Torrance.

Affidavit:

An affidavit form is enclosed. It must be completed signifying that the proposal is genuine and not collusive or made in the interest or on behalf of any person not named in the proposal, that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a sham proposal or any other person, firm, or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure for itself an advantage over any other Proposer. Any proposal submitted without an affidavit or in violation of this requirement will be rejected.

Standards for Evaluation of Proposals:

Proposals will be rated according to their completeness and understanding of the City's needs, conformance to the requirements of the technical specifications, prior experience with comparable proposals, delivery, and cost.

The ability, capability, experience, performance record, facilities, skill of the Proposer to perform the contract in accordance with these specifications and previous and existing compliance by the Proposer with laws and ordinances relating to the contract will all be considered in the award of contract.

Errors and Omissions:

The Proposer will not be allowed to take advantage of any errors and/or omissions in these specifications or in the Proposer's specifications submitted with its proposal. Full instruction will always be given when errors or omissions are discovered.

Permits and Licenses:

The Proposer must procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

Proposer's Examination of Requirements:

The Proposer is required to examine carefully, the entire RFP, any addenda thereto, and all related materials and data referenced herein. Proposer will be presumed to be familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, or document will in no way relieve the Proposer from any obligation with respect to this proposal.

The Contract:

The Proposer to whom the award is made will be required to enter into a written contract with the City of Torrance in the form attached (Attachment A). A copy of this notice inviting proposals, and the Proposer's accepted proposal will be attached to and become a part of the contract. All services supplied by the Vendor will conform to the applicable requirements of the City Charter, City Ordinances, and State or Federal Law covering Labor and Wages, as well as conforming to the specifications contained herein. In case of default by the Proposer, the City reserves the right to procure the articles or services from other sources and to hold the Proposer responsible for any excess cost incurred by the City hereby.

**Request for Proposal (RFP)
For Cold Beverage Vending Machine Services**

SECTION II GENERAL INFORMATION AND SCOPE OF WORK

A. INTRODUCTION:

The Contractor is responsible for the cold beverage vending operations for all locations listed in this RFP. Additional locations may be approved by the City after receiving a written request from the Contractor.

Contractor must maintain, and operate cold beverage vending machines, including performance of all required duties, including but not limited to, supplying, installing and maintaining beverage vending machines and related equipment, supplying brand name products, filling machines with brand name products, collecting funds from machines and remitting commissions and/or other payments to the City.

The City of Torrance is requesting minimum guaranteed cash revenue per month, plus a percentage of the monthly gross sales receipts.

The City of Torrance is also interested in creating promotional/advertising opportunities for the Contractor at City sponsored events. Please indicate in the proposal section, what promotional/advertising campaigns you would like to participate in such as advertising at City parks, hanging banners at City sponsored events, advertising on the side of City buses etc.

The Contractor must immediately remove all vending machines at the expiration, termination, or cancellation of the Contract.

B. GENERAL REQUIREMENTS:

1. Term

The initial term of the contract will be for three (3) years upon award and by mutual agreement may be renewed on an annual basis for up to two (2) additional one-year periods.

Commission pricing shall be fixed for the term of the contract and should be included as part of your proposal.

This is a revenue agreement. Contractor agrees to provide the City a guaranteed revenue and percentage of sales commission rebates set forth in the Contract as

consideration for the use of City premises for placement of Contractor's vending equipment.

At the expiration of contract, the Contractor must remove all machines from City property. Removal must be done within 2 weeks (14 calendar days) of the terms expiration date.

2. New/Refurbished Vending Machines/Equipment

All equipment must be clean and new or refurbished when installed. Refurbished equipment must be in like new condition and be not more than three (3) years old. Vending machines must have non-resettable cash accounting meters and bill validators. All equipment must be UL rated and equipped with contractor-furnished "Vending Miser" units. Contractor must advise City in writing of any changes to equipment. All changes in equipment must have prior written approval by the City.

Include a color photo or brochure and specifications for all equipment to be supplied hereunder. The documentation provided must include the estimated annual energy consumption of each piece of equipment and whether or not the equipment meets the Energy Star Vending Machine program specification for energy efficiency.

3. Facility Readiness

Any utility or structural upgrades to the facility required to place certain machines must be approved by the City in advance and funded by the contractor..

All equipment and utility or structural upgrades must comply with all local, state, and federal requirements. Contactor must obtain all applicable permits prior to executing any utility or structural upgrade work.

Any permanent upgrades to the facilities by the Contractor will remain at the location and become the property of the City without any further compensation to the Contractor by the City. Permanent upgrades include, but are not limited to utility upgrades, countertops or any other device or structure attached to the facility. Contractor will have accessibility to buildings during normal working hours.

4. Utility Charges

Contractor will be solely responsible for all utilities required, used or consumed on premises including but not limited to water and sewer service with the exception of electricity. The Contractor must coordinate with the City Manager's Office prior to installation of machines to ensure every unit, whether Energy Star labeled or not, is equipped with the "Vending Miser".

The City is not liable for any interruptions or curtailment in utility services due to causes beyond its control.

5. Additional Equipment

The City may recommend the installation of additional machines at various locations. The Contractor will have the opportunity to evaluate the request and determine the

feasibility of adding a new location. Certain locations placed outside of buildings may require metal cages to protect the vending machines.

6. Care of Equipment

All vending machines, dollar change machines and metal cages should be kept clean and free of graffiti. The Contractor is responsible for the removal of graffiti from the vending machines, dollar change machines and metal cages within 24 hours of notification.

7. Equipment Removal

The Contractor must not remove equipment from any location without the City's written consent. (Exception: Machines may be exchanged for like machines without receiving prior consent, however, the machine must be clean and new or refurbished when installed. Refurbished equipment must be in like new condition and be not more than three (3) years old. Contractor must advise the City in writing immediately following a change of equipment.)

8. Advertising

All language and slogans must be in good taste and compliment the professional image of the City and should promote good public relations. Any changes to advertising on the machines must be approved by the City.

9. Compliance with Laws/Permits/Licenses

The Contractor is responsible for obtaining all licenses, permits and governmental permissions. Contractor must comply with all current Federal, State and Local laws, statutes and guidelines including, but not limited to, California Uniform Retail Food Facilities Law, Article 10.

10. Product Pricing

Charges in the vending price must conform, to the initial proposal. The City requires thirty (30) days' prior notification in writing justifying price increases for items dispensed in vending machines. No change in the vend price or products may be made without the written consent of the City.

11. Commissions

Commission payments shall be based on gross receipts. The term "gross receipts" is defined to mean receipts from all sales made from vending devices on City property by the Contractor.

Gross Receipts do not include sales of merchandise for which cash has been refunded.

The Commission must be without deduction of gross receipts or tax imposed by any federal, state, municipal or governmental authority directly on sales and collected from customers. No franchise or capital stock tax and no income or similar tax based upon income or profits as such may be deducted from gross receipts.

12. Reports and Payments

The Contractor must submit the following reports Please submit a sample copy of the monthly sales/commission report Include your procedure for verifying sales at individual locations. The report must include sales data for each vending machine.

The Contractor's office will generate this report monthly. The Contractor's is responsible to gather information for all commission reports.

This report must be submitted with all payments to assure proper crediting of all commissions. The City must receive the payment and report by the 10th of each month for the preceding month.

Payments and required reports must be submitted and received on time. A late fee of 2% of that month's payment will be assessed for every seven (7)calendar days past the due date that the City has not received payment and the required reports.

All commission checks are to be made payable to the City of Torrance and forwarded with 3 copies of the gross receipt and commission reports. Checks, must be received by the 10th of each month for the preceding month. Payments are to be submitted to:

City of Torrance
City Treasurer's Office
3031 Torrance Blvd.
Torrance, CA 90503

13. Service calls

The Contractor must respond to all service calls within the times indicated:

- If called by the location by 12:00 noon, there must be same day service.
- If called by the location after 12:00 noon, there must be response by 12:00 noon of the following day.

The Contractor is responsible for notifying Contractor's service department if any vending machine, including dollar changer needs repair or cleaning. This service is in addition to regularly scheduled maintenance.

14. Tax Obligations

The Contractor is responsible for any tax obligations.

15. Refunds

Should the equipment malfunction, the Contractor is responsible for the reimbursement of lost funds to vending machine customers. Contractor must refund to any person

claiming to have lost money due to machine's malfunction.

Please submit your procedure or method of handling refunds to customers.

16. Product Availability

The Contractor shall be responsible for servicing the vending machines regularly to ensure ample stock of products is maintained in each machine seven (7) days a week. Machines located within locked facilities may be stocked on the next open day.

Machines must be kept continuously stocked with fresh, quality, and brand name merchandise.

17. Service Number

Contractor shall provide and pay for a toll-free telephone number at Contractor's place of business for use by City personnel to telephone from any location where vending machines are located to request maintenance service by Contractor. This toll-free number shall be provided within thirty (30) days of effective date of the resulting Contract. The toll-free number and contact information must be clearly posted on all vending machines.

18. Implementation

The City's current temporary provider of cold beverage vending machine services will end upon the City providing two (2) weeks notice. The transition to the new program must allow for uninterrupted vending machine service.

Describe your plan for start-up and implementation of the program at the City.

19. Customer Satisfaction

Customer satisfaction is an important part of this program. Contractor should monitor and report on the over-all program.

Describe your program for monitoring and evaluating your services. Provide sample evaluation questionnaire forms.

20. Single Point of Contact

The Contractor must designate a representative to act as the single point of contact for the City of Torrance. All complaints, demands, and notices of any kind, from the City will be directed to that individual.

If Contractor wishes to change its designated representative, the Contractor must notify the City in writing. Said person will meet and confer with the City Manager's designee, upon request, to discuss any and all complaints, demands or notices of any kind.

21. Review Meetings

The Contractor must attend quarterly scheduled meetings with City representatives. The purpose of the meetings is to identify/resolve problems, make minor changes, etc. Either party may request a meeting at anytime.

22. Correspondence

All correspondence to the City must be addressed and mailed as follows:

City of Torrance
City Manager's Office
Attn: Beverage Vending Service
3031 Torrance Blvd.
Torrance, CA 90503

23. Right to Audit

The Contractor must maintain financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The contractor must retain these records for a period of three years after final payment, or until the City conducts an audit. These records must be made available for examination transcription, and audit by the City, or its designee, during the term of the contract and the subsequent three-year period. Such audits will be conducted during normal business hours.

The Contractor must supply any records associated with this account upon written request of the City within five (5) business days of that request.

24. Malfunction Report

The Contractor must furnish a malfunction incident report to the City Manager's Designee upon completion of each maintenance call. The report must include as a minimum, the following:

- a. Date and time notified
- b. Date and time of arrival
- c. Type of machine
- d. Description of malfunction
- e. Remedy

25. Locations

Vending Machines Located Inside of Buildings Total Inside = 21		
Location	Quantity	Address
Police Department <ul style="list-style-type: none"> • Front Lobby • 2nd Floor Employee Lounge 	3	3300 Civic Center Drive
City Hall <ul style="list-style-type: none"> • East Annex Employee Lounge • West Annex Elevator Foyer 	2 2	3031 Torrance Blvd.
Cultural Arts Center <ul style="list-style-type: none"> • Dance Wing Hallway 	2	3330 Civic Center Drive
General Aviation Center/Torrance Airport	2	3301 Airport Drive
City Yard Facility <ul style="list-style-type: none"> • Fleet Services • Public Works • Transit 	1 4 1	20500 Madrona
City Cable Office	1	3350 Civic Center
Katy Geissert Civic Center Library <ul style="list-style-type: none"> • Employee Lounge 	2	3301 Torrance Blvd.
The Attic Teen Center	1	2320 Carson Street

Vending Machines Located Outside of Buildings and May Require Metal Cages Total Outdoor = 35		
Location	Quantity	Address
Ken Miller Recreation Center	2	3341 Torrance Blvd.
Personnel Building	2	3231 Torrance Blvd.
Columbia Park <ul style="list-style-type: none"> • East Side • North Side 	2 1	4045 190 th Street
De Portola Park	2	25616 Lazy Meadow Drive
Delthorne Park	1	3401 Spenser Street
El Nido Park	1	18301 Kingsdale Drive
Greenwood Park	2	1520 Greenwood Ave.
La Romeria Park	2	19501 Inglewood Ave.
Lago Seco Park	1	3920 235 th Street
Torrance Park	2	2001 Santa Fe Ave.
Victor Park	1	4727 Emerald Ave.
Wilson Park <ul style="list-style-type: none"> • Skate Park • Hockey Rink • Softball Fields • East End 	2 4 2 2	2200 Crenshaw Ave.
Wilson Park Sports Center	2	2400 Jefferson Street
Sea Aire Golf Course	2	22730 Lupine Drive
Benstead Plunge	2	3331 Torrance Blvd.

CITY OF TORRANCE
3031 Torrance Blvd.
Torrance, CA 90503

RFP No. B2007-

Request for Proposal (RFP)

For Cold Beverage Vending Machine Services

SECTION III PROPOSER'S RESPONSE

FAILURE TO COMPLETE ALL ITEMS IN THIS SECTION MAY INVALIDATE YOUR PROPOSAL

In accordance with your "Request for Proposal", the following proposal is submitted to the City of Torrance.

Proposal Submitted By:

Name of Company

Address

City/State/Zip Code

Printed Name/Title

Telephone Number/Fax Number

Form of Business Organization:

Please indicate the following (check one);

Corporation _____ Partnership _____ Sole Proprietorship _____

Other: _____

Business History:

How long have you been in business under your current name and form of business organization?

_____ years

If less than three (3) years and your company was in business under a different name, what was that name?

Contact for Additional Information:

Please provide the name of the individual at your company to contact for any additional information

Name

Title

Telephone Number/Fax Number

Addenda Received:

Please indicate addenda information you have received regarding this RFP:

Addendum No. _____ Date Received: _____
 Addendum No. _____ Date Received: _____
 Addendum No. _____ Date Received: _____
 Addendum No. _____ Date Received: _____

_____ No Addenda received regarding this RFP.

References:

Please supply the names of companies/agencies for which you recently supplied comparable goods and services as requested in this RFP.

Name of Company/Agency	Address	Person to contact/Telephone No.

Renewal Option:

We would agree to a fourth year with terms and conditions unchanged.

Yes _____ No _____

We would agree to a fifth year with terms and conditions unchanged.

Yes _____ No _____

Proposer must complete fill in the table below with a check mark to indicate that the item being proposed is exactly as specified or not. If not, the proposer must indicate any deviation from the specifications.

SERVICE SPECIFICATION COLUMN	PROPOSER'S COMMENTS COLUMN
<p>The proposal submitted is as per the RFP in its entirety.</p> <p>If no, list all deviations:</p>	<p>Yes ___ No ___</p> <hr/> <hr/>
<p>Is the procedure/method of handling refunds to customers attached to your RFP response?</p>	<p>Yes ___ No ___</p>
<p>Is your plan for start-up and implementation of the program attached to your RFP response?</p>	<p>Yes ___ No ___</p>
<p>Is there a sample of your gross receipts report attached to your RFP response?</p>	<p>Yes ___ No ___</p>
<p>Is there a sample of a sales commission report attached to your RFP response?</p>	<p>Yes ___ No ___</p>
<p>Is your plan for monitoring and evaluating your services attached to your RFP response?</p> <p>Did you provide a sample evaluation questionnaire form?</p>	<p>Yes ___ No ___</p> <p>Yes ___ No ___</p>
<p>Did you provide a sample of your machine malfunction report?</p>	<p>Yes ___ No ___</p>
<p>Do you have the ability to send reports via email in spreadsheet format such as Excel?</p>	<p>Gross Receipts Report Yes ___ No ___</p> <p>Sales Commission Report? Yes ___ No ___</p> <p>Machine Malfunction Report? Yes ___ No ___</p>

Revenue and Price Summary:

A. Monthly Guaranteed Revenue to be provided to the City \$ _____

B. Percentage of Monthly Gross Sales to be provided to the City % _____

Brand names of carbonated soft drinks	Size of Can or Bottle	Proposed Selling Price

Brand names of real fruit drinks	Size of Can or Bottle	Proposed Selling Price

Brand names of water	Size of Can or Bottle	Proposed Selling Price

Discount Pricing/Promotions:

The City may on occasion, purchase products by the case for City sponsored events. Please provide pricing for such purchases.

Product	Bottle/Can Size	Count per Case	Case Price Including California Redemption Value (CRV)
Carbonated Soft Drinks			\$
Real Fruit Drinks			\$
Water			\$

Are you willing to donate any products for City sponsored events?

Yes ___ No ___

If yes, does it include the CRV? Yes ___ No ___

If no, what is the CRV that the City would have to pay? \$ _____

If yes, what are you willing to donate?

Product	Bottle/Can Size	Count per Case	Annual Case count of your donation to the City of Torrance
Carbonated Soft Drinks			
Real Fruit Drinks			
Water			

Please indicate what promotional/advertising campaigns you would like to participate in such as advertising at City parks, hanging banners at City sponsored events, advertising on the side of City buses etc.

Promotional/Advertising Campaigns	
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PROPOSER'S AFFIDAVIT

_____ being first duly sworn, deposes and says:

1. That he/she is the _____ of _____
(Title of Office) (Name of Company)

hereinafter called "Proposer", who has submitted to the City of Torrance a proposal for

(Title of RFP)

- 2. That the proposal is genuine; that the same is not sham; that all statements of fact in the proposal are true;
- 3. That the proposal was not made in the interest or behalf of any person, partnership, company, association, organization or corporation not named or disclosed;
- 4. That the Proposer did not, directly or indirectly, induce solicit or agree with anyone else to submit a false or sham proposal, to refrain from proposing, or to withdraw his proposal, to raise or fix the proposal price of the Proposer or of anyone else, or to raise or fix any overhead, profit or cost element of the Proposer's price or the price of anyone else; and did not attempt to induce action prejudicial to the interest of the City of Torrance, or of any other Proposer, or anyone else interested in the proposed contract;
- 5. That the Proposer has not in any other manner sought by collusion to secure for itself an advantage over the other Proposer or to induce action prejudicial to the interests of the City of Torrance, or of any other Proposer or of anyone else interested in the proposed contract;
- 6. That the Proposer has not accepted any RFP from any subcontractor or materialman through any RFP depository, the bylaws, rules or regulations of which prohibit or prevent the Proposer from considering any RFP from any subcontractor or materialman, which is not processed through that RFP depository, or which prevent any subcontractor or materialman from proposing to any contractor who does not use the facilities of or accept RFPs from or through such RFP depository;
- 7. That the Proposer did not, directly or indirectly, submit the Proposer's proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, RFP depository, or to any member or agent thereof, or to any individual or group of individuals, except to the City of Torrance, or to any person or persons who have a partnership or other financial interest with said Proposer in its business.
- 8. That the Proposer has not been debarred from participation in any State or Federal works project.

Dated this ____ day of _____, 2007.

(Proposer Signature)

(Title)

**VENDING SERVICES AGREEMENT FOR COLD BEVERAGE MACHINES
(VENDING CONTRACT)**

This VENDING SERVICES AGREEMENT (“Agreement”) is made and entered into as of [Insert Date] (the “Effective Date”), by and between the CITY OF TORRANCE, a municipal corporation (“CITY”), and [Insert Name And Business Entity Description] (“VENDOR”).

RECITALS:

- A. CITY wishes to obtain the obtain a VENDOR to supply, install and service beverage vending machines for the City of Torrance on CITY property.
- B. In order to obtain the desired materials and services, the CITY has circulated its Request for Proposal for [Insert Brief Title Of RFP, RFP No. (the “RFP”).
- C. VENDOR has submitted a Proposal (the “Proposal”) in response to the RFP. In its Proposal VENDOR represents that it is in the business of providing vending machines and it is qualified to perform these services. Based upon its review of the proposals submitted in response to the RFP, the CITY is willing to award the contract to VENDOR.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY VENDOR

VENDOR will provide the services and install those materials listed in VENDOR’s Proposal submitted in response to the RFP. A copy of the RFP is attached as Exhibit A. A copy of the Proposal is attached as Exhibit B.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect for three years from the Effective Date of the Agreement. The Agreement may be renewed on an annual basis for up to two additional one year terms.

3. VENDING FEES

In consideration of the access and privileges granted in this Agreement to VENDOR, VENDOR shall pay CITY in accordance with the compensation schedule set forth in the Proposal.

4. TERMINATION OF AGREEMENT

A. Termination for Cause.

- 1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure

to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the VENDOR, the CITY may, at the expense of the VENDOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the VENDOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the VENDOR and its surety from liability for the default. Under these circumstances, however, the VENDOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.
3. Termination for cause will not affect or terminate any of the rights of the CITY as against the VENDOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

B. Termination for Breach of Law.

In the event the VENDOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public VENDOR or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect VENDOR's responsibility as a public VENDOR or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until VENDOR has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **[INTENTIONALLY DELETED]**

7. **CITY REPRESENTATIVE**

[Insert Name Of City Representative Here] is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The CITY has the right to designate another City Representative at any time, by providing notice to VENDOR.

8. **VENDOR REPRESENTATIVE(S)**

The following principal(s) of VENDOR are designated as being the principal(s) and representative(s) of VENDOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

[Insert Name Of Vendor Representative Here]

9. **INDEPENDENT CONTRACTOR**

The VENDOR is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the VENDOR or any of the VENDOR's employees, except as otherwise set forth in this Agreement. The VENDOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **BUSINESS LICENSE**

The VENDOR must obtain a City business license prior to the start of work under this Agreement, unless VENDOR is qualified for an exemption.

11. **OTHER LICENSES AND PERMITS**

VENDOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, VENDOR warrants that VENDOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, VENDOR warrants that VENDOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should VENDOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, VENDOR must immediately inform CITY of that fact and may not proceed except at VENDOR's risk until written instructions are received from CITY.

13. CARE OF WORK

VENDOR must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. VENDOR'S ACCOUNTING RECORDS

Records of the VENDOR's accounts between CITY and VENDOR, will be kept on a generally recognized accounting basis. VENDOR will also maintain all other records, including maintenance records relating to the Agreement between CITY and VENDOR. All records will be available to the CITY during normal working hours. VENDOR will maintain these records for three years after final payment to CITY.

15. INDEMNIFICATION

VENDOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of VENDOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, VENDOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between VENDOR and CITY, as to whether liability arises from the sole negligence of

the CITY or its officers, employees, agents, subcontractors or vendors, VENDOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. VENDOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to VENDOR, in the event of any default or breach by the CITY or for any amount that may become due to VENDOR.

17. INSURANCE

A. VENDOR must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
 - b. Primary Property Damage of at least \$250,000 per occurrence; or
 - c. Combined single limits of \$1,000,000 per occurrence.
2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
3. Professional liability insurance with limits of at least \$1,000,000 per occurrence.
4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.

B. The insurance provided by VENDOR will be primary and non-contributory

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. VENDOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

- E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. SUFFICIENCY OF INSURERS AND SURETIES

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the VENDOR agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that VENDOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.
- C. VENDOR warrants that it is paying no fees, commissions, or remuneration of any type to CONSULTANT or any officers or employees of CITY for the privileges granted pursuant to this Agreement other than those fees specified in Section 3 "VENDING FEES" of this Agreement.

20. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.
6. Addresses for purpose of giving notice are as follows:

VENDOR: Vendor's Name and Address

Fax: Insert Fax Number

CITY: City Clerk
 City of Torrance
 3031 Torrance Boulevard
 Torrance, CA 90509-2970
 Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. **PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**
This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or VENDOR without the prior written consent of the other.
22. **INTEGRATION; AMENDMENT**
This Agreement represents the entire understanding of CITY and VENDOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.
23. **INTERPRETATION**
The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.
24. **SEVERABILITY**
If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.
25. **TIME OF ESSENCE**
Time is of the essence in the performance of this Agreement.
26. **GOVERNING LAW; JURISDICTION**
This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.
27. **COMPLIANCE WITH STATUTES AND REGULATIONS**
VENDOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.
28. **WAIVER OF BREACH**
No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.
29. **ATTORNEY'S FEES**
Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement

(whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. VENDOR'S AUTHORITY TO EXECUTE

The person(s) executing this Agreement on behalf of the VENDOR warrant that (i) the VENDOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the VENDOR; (iii) by so executing this Agreement, the VENDOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the VENDOR is bound.

CITY OF TORRANCE
a Municipal Corporation

Firm Name
Type of Entity

Frank Scotto, Mayor

By: _____
Signer
Title

ATTEST:

Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____

Attachments: Exhibit A RFP
 Exhibit B Proposal

Revised: 9/05/07

EXHIBIT A

RFP

EXHIBIT B
PROPOSAL