Submitted By: Angela Chen, Commissioner of Enterprise Operations

Subject: Approval of Micro 101 Contract


Approved: Consensus
Against:  
Abstain:  

Council Approval;
Certified by:

__________________________  ____________________________
Chair of the Council       Date for Chair of the Council

__________________________  ____________________________
Presidential Approval       Date for the President
 AGREEMENT  

This Agreement ("Agreement") is made as of July 1, 2005 between The Regents of the University of California on behalf of Associated Students of the University of California (ASUCSD) and Micro 101 Solutions ("Contractor.").

Contractor and A.S. agree as follows:

1. Description of Program.

Contractor agrees to provide refrigerator/freezer/microwave oven units ("Units") for the residence halls of ASUCSD as follows:

   A. Contractor shall rent the Units to the students for the rental fee specified in the Rate Sheet, attached hereto as Appendix B and incorporated by reference herein.

   B. Contractor is responsible for all activities and expenses required to install the units in the residence hall rooms, including freight, handling, and installation, and removal and disposal of all packaging materials.

   C. Contractor will provide, at no additional cost, marketing materials to support the ASUCSD promotion of the program to its students.

   D. A.S. agrees to allow Contractor to install the units at the locations designated in paragraph 2.

   E. Contractor shall service and maintain the Units in good working condition, reasonable wear and tear excepted. Contractor shall provide service and parts to repair any defect in material or workmanship at its own expense and at no additional charge to ASUCSD. Contractor shall use reasonable efforts to service and/or repair non-operating Units within 24 hours of receiving a request from a student and/or the ASUCSD. In the event that Contractor cannot restore the Unit to good operating condition within 48 hours of receiving a request from a student and/or the ASUCSD, Contractor shall replace the non-operating Unit.

   F. Contractor will provide Units with the specifications and capacities listed in the Specification Sheet, which is attached hereto as Appendix C and incorporated by reference herein.

2. Location.

This Agreement is for services at all of the on-campus residence halls of the University of California, San Diego Campus. Contractor agrees to make available up to as many Units as ASUCSD requires.

3. Term of Agreement.

This Agreement shall commence July 1, 2005 and shall end on June 30, 2006.

4. Payment.

Contractor agrees to pay the ASUCSD as an administrative cost, $25.00 for each Unit leased.
5. **Exclusive Arrangement.**

   - ASUCSD agrees that this Agreement is exclusive with regard to the procurement of such Units for its students and that ASUCSD shall not procure, rent, lease, or purchase similar units from others for its students’ dormitory rooms, or promote or arrange for the provision of similar units from others for its students’ dormitory rooms, during the term of this Agreement unless Contractor is unable to meet the demand in a timely fashion.

6. **Liability.**

   ASUCSD shall not be liable to Contractor for indirect, special, incidental, or consequential damages of any nature whatsoever for any breach of this Agreement even if advised of the possibility of such damages ASUCSD assumes no liability or responsibility for the loss or damage to any Unit.

7. **Warranties.**

   **REPAIR OR REPLACEMENT.** CONTRACTOR’S LIABILITY UNDER ITS LEASES TO STUDENTS SHALL BE LIMITED TO REPAIRING OR REPLACING DEFECTIVE GOODS. HOWEVER, IF CONTRACTOR FAILS IN ITS ATTEMPT TO REPAIR THE DEFECTS, UNIVERSITY WILL BE ENTITLED TO RETAIN MONIES PAID TO UNIVERSITY UNDER THIS AGREEMENT.

   **NO CONSEQUENTIAL DAMAGES.** CONTRACTOR SHALL NOT BE LIABLE FOR ASUCSD LOSS OF PROFITS, BUSINESS GOODWILL, OR OTHER CONSEQUENTIAL DAMAGE, DESPITE ANY FAILURE TO REPAIR OR REPLACE THE GOODS, IF CONTRACTOR FAILS IN ATTEMPT TO SATISFY SERVICE REQUEST, STUDENTS ARE GRANTED A PRORATED REFUND ACCORDING TO TIME RENTED. ASUCSD HAS ACCEPTED THIS RESTRICTION ON ITS RIGHT TO RECOVER CONSEQUENTIAL DAMAGES AS PART OF ITS BARGAIN WITH CONTRACTOR. ASUCSD REALIZES AND ACKNOWLEDGES THAT THE PRICE OF THE GOODS WOULD BE HIGHER IF CONTRACTOR WERE REQUIRED TO BE RESPONSIBLE FOR ASUCSD CONSEQUENTIAL DAMAGES.

8. **Ownership.**

   The Units are, and at all times remain, the property of Contractor, and ASUCSD will have no right, title, or interest in it except as expressly set forth in this Agreement.

9. **Relationship of the Parties.**

   Contractor enters into this agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to ASUCSD as his/her employer, or as a partner, agent, or principal. Contractor’s employees shall not be entitled to any benefits accorded to ASUCSD employees including worker’s compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor’s expense, and in Contractor’s name, disability, worker’s compensation or other insurance as well as licenses and permits usual or necessary for performing the services required under this Agreement.

   Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor’s compensation, including estimated taxes, and shall provide ASUCSD with proof of payment on demand. Contractor shall indemnify ASUCSD for any claims, loses, costs, fees, liabilities, damages or injuries suffered by ASUCSD arising out of Contractor’s breach of this
10. **Termination.**

This Agreement may be terminated by either party at any time upon a 30-day notice to the other party.

11. **Notices.**

Except as otherwise expressly provided by law, any notices or other communications to either party by the other party relating to this Agreement will be in writing and will be deemed duly served or given when personally delivered to the designated agent of the party to whom they are directed, or in lieu of that personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Contractor at 14731 Bartley Lane Suite 101 San Diego, Ca 92126 or to ASUCSD at Purchasing Division, 9500 Gilman Dr. MC 0914, La Jolla, CA 92093-0914 Either party may change its address for the purpose of this Paragraph by giving written notice of the change to the other party in the manner provided in this Paragraph.

12. **Governing Law.**

This Agreement will be deemed to be executed and delivered in California and governed by the laws of the State of California.

13. **Severability Clause.**

If any provision of this Agreement or the application of any of its provisions to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of those provisions to the other parties or circumstances, will remain valid and in full force.

14. **Appendix A**

Appendix A is attached to, and made a part of, this Agreement.

15. **Indemnification.**

The Contractor shall defend, indemnify, and hold ASUCSD, its officers, employees, agents, and students harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages that are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, agents, or employees.

16. **Insurance.**

The Contractor, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force, and maintain insurance during the term of this Agreement and for a period of three years thereafter as follows:

A. Comprehensive or Commercial Form General Liability (Contractual Liability Included)
   - Each Occurrence: $1,000,000
   - Products/Completed Operations: $1,000,000
   - Personal and Advertising Injury: $1,000,000
   - General Aggregate: $2,000,000 (not applicable to comprehensive form)
B. Business Automobile Liability:
   - (MINIMUM LIMITS) for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than $1,000,000 per occurrence.
Certificate of Insurance shall name The Regents of the University of California as an additional insured and shall be provided to A.S. prior to contract commencement. Contractor shall mail the certificate of insurance to:

UCSD  
Attn: Diane Wynshaw-Boris  
9500 Gilman Drive MC #0914  
La Jolla, CA  92093-0914

17. **Entire Agreement.**

   This Agreement constitutes the entire agreement between the parties with regard to the subject matter herein

ASSOCIATED STUDENTS

Dated: ____________________________  
Signature ____________________________  
Printed name and capacity of signer

College Resident Dean of Residence Life

Dated: ____________________________  
Signature ____________________________  
Printed name and capacity of signer

The Regents of the University of California on behalf of its San Diego campus

Dated: ____________________________  
Signature ____________________________  
Printed name and capacity of signer

MICRO 101 SOLUTIONS

Dated: ____________________________  
Choyce Bostian  
COO

**APPENDIX**

A
As discussed here is the detailed Cool-Wave™ Program for UCSD:

1) $25.00 per unit will be given to Associated Students for administering the program.
2) $600.00 donation will also be given on behalf of Micro 101 Solutions to the AS-UCSD and $400.00 will be given on behalf of Micro 101 Solutions to UCSD Residence Life.
3) Free Books for a year will be randomly given away to one student customer, not to exceed $600.00.
4) Once a quarter, free pizza will be given to the Resident Deans for their student staff, not to exceed $500.00.
5) A Free Cool-Wave™ for the year will be given away to a student customer.
6) Up to 4 Cool-Wave’s™ to be given away on behalf of Residence Life for such things as “Scavenger Hunt’s, Casino Night” or whatever move-in functions that Residence Life has.
7) 10 free fridges will be given to the A.S. Enterprise Office.
8) Guaranteed 24-Hour Service Calls resolved.
9) Special pricing for students in Single Rooms, RA’s, or any student that works for Residence Life as a Student of the University, which special pricing is listed on Appendix B and incorporated by reference herein.
10) Free Brand New Unit will be given to the bookstore.

Some of the other benefits of Micro 101 Solutions, Inc.:

A) A California Small Business Corporation
B) Located in a HUB Zone
C) A Family Owned Corporation
D) Gold Level Member with WACUHO
E) 24-Hour Service Center
F) 10 Years in the Collegiate Rental Business
G) “Big Enough to Serve, Small Enough to Care”

APPENDIX B
RATE SHEET
See attached Sheet

(include special pricing for single rooms, RA’s, etc.)

APPENDIX C
UNIT SPECIFICATIONS
See attached Sheet