

**EXCERPT OF THE MEETING OF THE  
IMPERIAL COMMUNITY COLLEGE DISTRICT  
BOARD OF TRUSTEES**

**March 13, 2002**

M/S/C Keithly/Wong

Resolution No. 12384: **AWARDING OF BOOKSTORE BID FOR OPERATION OF IVC  
BOOKSTORE**

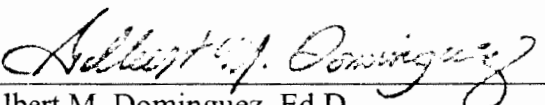
WHEREAS on January 23, 2002 the District invited bids from vendors for the operation of the IVC Bookstore; and

WHEREAS Follett Higher Education Group has submitted the most beneficial proposal for the students and the district.

NOW, THEREFORE BE IT RESOLVED that the Superintendent/President and/or the Vice President for Business Services consummate a contract with Follett Higher Education Group for operation of the IVC Bookstore commencing June 1, 2002 and ending on May 31, 2007, with two five-year options for extension based on a favorable performance evaluation by Imperial Valley College; and

BE IT FURTHER RESOLVED that the District expresses its sincere appreciation to Aztec Shops, Ltd for their 12 years of service to Imperial Valley College Students and Staff.

I hereby certify that the above is a true and correct copy of a portion of the minutes from the meeting of the Imperial Community College District Board of Trustees.

  
\_\_\_\_\_  
Gilbert M. Dominguez, Ed.D.  
ICCD Board Secretary

**BOOKSTORE OPERATING AGREEMENT BETWEEN  
IMPERIAL VALLEY COLLEGE  
AND THE FOLLETT HIGHER EDUCATION GROUP**

This Bookstore Operating Agreement ("Agreement") is made as of June 1, 2002 between Imperial Valley College ("College") and Follett Higher Education Group, Inc. ("Follett").

Intending to be legally bound, College and Follett agree:

1. **Store.** Subject to all the terms and conditions in this Agreement, Follett shall operate a bookstore ("Store") in a location furnished by College.
2. **Term.** This Agreement takes effect June 1, 2002 and continues, unless sooner terminated in accordance with Section 3, until May 31, 2007 with two five-year options for extension based upon a performance evaluation by the District. Thereafter, unless either party notifies the other in writing at least 150 days before expiration of the initial term, or then-current renewal term, of its intention not to renew, this Agreement shall automatically renew for successive one-year renewal terms under the same terms and conditions prevailing at the end of the initial term or the immediately preceding renewal term, as the case may be.
3. **Early Termination.**
  - 3.1 Either party may terminate this Agreement with or without cause by giving the other party at least 150 days prior written notice of termination.
  - 3.2 College may terminate this Agreement upon 90 days prior written notice for material nonperformance by Follett documented in accordance with Section 7.4.
  - 3.3 College may terminate this Agreement immediately if Follett initiates any bankruptcy proceeding, or if any such proceeding initiated against Follett remains undismissed for 60 days.
4. **Rights Upon Termination, Expiration or Non-Renewal.**
  - 4.1 Termination, expiration or non-renewal of this Agreement shall not affect any right of either party accrued prior to such termination, expiration or non-renewal.
  - 4.2 If College terminates this Agreement pursuant to Section 3, then College shall pay Follett the unamortized book value (calculated on the straight-line method from the in-service date[s] over 8 years of all Store Upgrades (as defined in Section 5) made by Follett.
  - 4.3 On any termination, expiration or non-renewal of this Agreement, College shall purchase, or require a new contractor to purchase, the Store inventory then on hand on the same terms as purchased by Follett under Section 9.1.

5. **Store Upgrades.**

5.1 Follett shall pay up to a total of \$122,000 to upgrade the Store in accordance with this Section 5, as follows:

\$122,000 to cover the purchase, installation and decorating of:

- New “Signature Look” fixtures
- New furniture and signage
- Paint

(All of the foregoing, together with all replacements, additions, and extensions, and any other capital equipment or improvement furnished by Follett to the Store (except POS), constitute the “Store Upgrades.”)

5.2 Follett shall prepare complete plans and specifications for the Store Upgrades for review and approval by College, and shall work closely with College to develop mutually acceptable plans (“Plans”). College shall have the final approval over all the Plans; provided, however, that Follett’s payment shall not exceed the amount shown in this Section 5.

5.3 When College has given final approval to the Plans, Follett shall submit an installation and construction schedule to College for approval. College shall review and comment on the Plans and schedule in a reasonable time frame to allow the project completion date to be met.

5.4 The Store Upgrades shall meet or exceed the requirements of the Americans With Disabilities Act (“ADA”) and all other applicable codes, laws and regulations, and shall be in accordance with Follett’s Design Intent documents.

5.5 All capital equipment purchased by Follett and not attached as a fixture to real estate will remain the property of Follett.

6. **General Rights and Responsibilities of Follett.**

6.1 Follett shall operate the Store in accordance with the highest standards and commercial practices in the college bookstore industry.

6.2 Follett shall operate the Store 12 months per year. The name of the Store shall not change. The Store’s normal hours of operation and holiday closing schedule, shall be as approved in writing by College; hours of operation during registration periods, the first two weeks of classes, and all special campus events, shall be extended to coincide with demand.

6.3 Follett shall have the exclusive right, free from any competitor endorsed, licensed or otherwise approved or supported by College (whether on campus, by catalog or through

electronic commerce) to select vendors of, buy, sell, and distribute merchandise and services traditionally offered in college and university bookstores, including but not limited to, textbooks, class rings, graduation regalia (sale and rental) and announcements, course-adopted software and paper and electronic custom anthologies, and textbook buybacks. Follett shall also have right of first refusal to fulfill any distance learning instructional and ancillary materials required by College during the term of this Agreement. This Section 6.3 does not prohibit occasional sales by student groups or student government organizations that do not materially impact Store sales.

- 6.4 College grants Follett the right, subject to College's published standards, to use the College's seal, logotype, and associated trademarks and service marks on stationery, soft goods, notebooks, pens, pencils, decals and other goods traditionally sold in college and university bookstores.
- 6.5 Follett shall be responsible for daily cleaning, including provision of janitorial equipment and supplies, of the Store's interior, and cleaning, maintenance and minor repairs of wall and floor coverings, furniture, fixtures and equipment.
- 6.6 Follett shall cooperate with College in providing Store security, theft prevention, and emergency procedures in case of fire or casualty. In cooperation with College Security, Follett shall create and maintain a Store security plan acceptable to College for textbook buyback, rush and other special events.
- 6.7 Follett shall not cause College's students, faculty, or staff suspected of theft or disturbance to be arrested by public authorities (except in emergencies) or prosecuted without prior consultation and approval by College. Follett will follow the disciplinary guidelines and policies of College.
- 6.8 In its operation of the Store, Follett shall pay its bills to College and to third parties in a timely manner.
- 6.9 Follett shall collect and pay any sales tax, income tax, and all other local, state and federal taxes on Follett's operation (except property taxes on the Store).
- 6.10 Follett shall obtain and maintain at its sole expense, and in its name, all necessary licenses and permits required to perform the services described herein.
- 6.11 Follett shall abide, and require its employees to abide, by applicable College regulations and policies. College shall provide Follett with copies of applicable policies, and timely inform Follett of any changes.
- 6.12 Follett shall abide by all federal, state and local laws applicable to its operation, including, but not limited to, applicable sanitation, safety and fire codes, and any other laws, regulations and ordinances that apply to Follett's operations. Without limiting the generality of the foregoing, Follett shall at all times comply with the ADA in making the Store Upgrades, placing fixtures, merchandising, and in the employment of its personnel.

- 6.13 In performing this Agreement, Follett shall not discriminate based on sex, race, national origin, religion, color, sexual orientation, veteran status, disabled veteran status, age or disability protected under the ADA.
- 6.14 Follett shall be responsible for any loss or damage to property owned by College or others that is in Follett's possession or control or is caused by Follett or its employees or agents in the course and scope of their employment.
- 6.15 Follett will make its corporate representatives reasonably available to College to discuss and resolve any operational issues.
- 6.16 Follett will offer College faculty and staff a 10% discount on all purchases over \$1.00, excluding textbooks, sale merchandise and academically discounted software. Follett will offer all College departments a 20% discount on purchases of supplies over \$1.00, excluding sale merchandise and academically discounted software.
- 6.17 Follett agrees to provide \$5,000 in textbook scholarships per year during the term of this Agreement. Scholarships shall be made available to College at the beginning of each College year.
- 6.18 Follett agrees to participate in the Bookstore Advisory Committee. It is understood that the College has a Bookstore Advisory Committee. Follett's management shall meet regularly with the Bookstore Advisory Committee and with College officials to review bookstore operations. Further, Follett management shall work cooperatively with the College's shared governance structures, and with College officials, in the development and improvement of the bookstores' program, services and policies. Follett shall make every reasonable effort to comply with requests from the Bookstore Advisory Committee and from College officials for the improvement of the bookstores' program, services, and policies. The bookstore manager, or his/her designee, is also expected to meet periodically with Deans, Chairpersons, and other faculty members.
- 6.19 Follett agrees to provide employment opportunities for the College's students.
- 6.20 Follett agrees to become involved in the academic, cultural, and social environment of the College, taking advantage of opportunities to offer special merchandising and other assistance based upon the Colleges' ongoing and unique activities.
- 6.21 Follett agrees to service special District program needs such as vouchers and direct program billing, provided the funding agency completes Follett's credit program application.

7. **General Rights and Responsibilities of College.**

- 7.1 College will name a representative authorized to advise Follett of College's approvals, consents and instructions under this Agreement.

- 7.2 College reserves the right, after consultation with Follett, to establish or change the service hours, plans or other methods of operation of the Store.
- 7.3 College may prohibit sale of any item at the Store it finds offensive or inappropriate.
- 7.4 If at any time College is dissatisfied with Follett's performance under this Agreement, College shall document the unsatisfactory performance and submit the documentation to Follett for immediate review and corrective action. College may require a review meeting to prepare the corrective action.
- 7.5 College shall provide the following services to the Store in accordance with College's building standards:
- a) Security in the same manner provided for other College campus buildings;
  - b) Internal and external building maintenance, including, but not limited to, plumbing, electric, light bulbs, HVAC and other mechanical systems, fire protection, roof membrane and structure, walls, windows and doors.
  - c) Pest control services on the regular College schedule;
  - d) Lost and found service as regularly provided by College;
  - e) Parking for Follett's full-time employees in common with other authorized parkers in a location approved and provided by College (Follett's employees must abide by all applicable parking regulations);
  - f) On-campus telephone service including all equipment and lines (Telephone toll charges to be at Follett's expense); and
  - g) Building standard utilities.
- 7.6 College will cooperate with Follett, and will cause its faculty and staff to cooperate with Follett, in the timely solicitation of accurate textbook adoption information. Follett will provide College with periodic reports of late orders to assist College in monitoring compliance with its text adoption policies.
- 7.7 Should any Follett employee lose assigned keys, or in any other way jeopardize the security of the facility, Follett will be charged for all associated costs required to re-key the building in its entirety, or any area controlled by the lost keys/cards, as applicable.
- 7.8 Follett shall provide for sales of textbooks and other educational materials required for courses at the extended campus centers, via [efollett.com](http://efollett.com) during the first year of operation. College will make an assessment of [efollett.com](http://efollett.com) satisfying the needs of students at the extended campus centers. If mutually determined that students are not being served adequately, other arrangements will be made to correct the situation.
- 7.9 Follett will provide for a faculty account for the purpose of supplying a textbook for faculty use until said faculty receives a desk copy from the publisher. On a monthly basis, Follett will bill the College for any unreturned textbooks by authorized faculty members.

- 7.10 Textbook orders should be placed in ample time for the books to arrive well in advance of registration. Upon receipt of textbooks, instructional divisions should receive notice, through approved campus channels, of quantities available. If information is received from a textbook supplier that a book is back-ordered or unavailable, a report of the problem should be made to the instructional division immediately.
- 7.11 Approximately ten (10) working days prior to the beginning of a semester, Follett management shall make a comprehensive report to each instructional division confirming quantities on hand and giving notice of existing or anticipated shortages, along with actions undertaken to resolve the shortages before the semester begins.
- 7.12 If there is an unavoidable shortage of a textbook at the beginning of the semester, the faculty and students are entitled to the persistent efforts of Follett personnel to obtain the book. While this effort is underway, the instructional division should receive frequent reports of the status of the order and remedial actions that have been undertaken.
- 7.13 In the event of a shortage of textbooks due to an underestimate in ordering, Follett will make use of expedited shipping (3-5 days) at its own expense, to accommodate the shortfall.

**8. Bookstore Personnel.**

- 8.1 Follett will furnish sufficient adequately trained personnel to provide efficient and courteous service to customers, including sufficient substitute personnel in case of employee absence. To support Follett's "People First™" culture, Follett will provide ongoing training in customer service. Follett will formally recognize and reward employees who provide superior customer service.
- 8.2 College may participate in interviewing and evaluation of Follett's Store Manager should the need arise to fill the position. Follett's selection of the Store Manager is subject to College's approval.

**9. Bookstore Stock and Sales.**

- 9.1 On commencement of this Agreement, Follett shall purchase from Aztec Shops all saleable merchandise in the Store, including new textbooks, used textbooks, trade, reference and technical books, general merchandise, and any verified, usable credits with publishers or vendors. Follett will cause all such merchandise to be inventoried by an independent firm. College may observe the inventory if desired. Within 120 days after the completion of the inventory, Follett shall pay Aztec Shops for the merchandise as follows:
- a) New Textbooks
1. Follett will purchase new textbooks adopted for the next academic term in quantities not exceeding course requirements at standard industry discounts or cost.

2. Follett will purchase new textbooks not adopted for the next academic term, or adopted but in excess of course requirements, at the current wholesale price.
- b) Used Textbooks
    1. Follett will purchase used textbooks adopted for the next academic term in quantities not exceeding course requirements at 50% of the current new text selling price.
    2. Follett will purchase used textbooks not adopted for the next academic term, or adopted but in excess of course requirements, at current wholesale price.
  - c) Trade, Reference and Technical Books (“Trade Books”)
    1. Follett will purchase Trade Books that have been purchased during the past academic year and are returnable to the publisher at standard industry discounts or cost.
    2. Follett will purchase Trade Books not meeting these requirements at a price agreeable to Aztec Shops and Follett.
  - d) General Merchandise
    1. Follett will purchase general merchandise traditionally sold in college bookstores, purchased in the past academic year, in saleable condition, and not in excessive quantities, at standard industry discounts or cost.
    2. Follett will purchase general merchandise not meeting these requirements at a price agreeable to Aztec Shops and Follett.
- 9.2 In operating the Store, Follett will charge industry standard, competitive and fair prices, as follows:
- a) On new textbooks and trade books, not more than the publishers’ list price, or a 25% gross profit margin excluding freight (gross delivered cost divided by .75) on net price books.
  - b) On used books, including cloth, paperback and others, not more than 75% of the new textbook selling prices.
  - c) On general merchandise, not more than the normal gross profit margin for similar merchandise in the college bookstore industry.
- 9.3 Follett will expediently process text requests placed after the adoption deadline.
- 9.4 Follett shall purchase used textbooks year round. Follett shall purchase used textbooks adopted for the next academic term in quantities sufficient to meet course requirements at not less than 50% of the retail price. Follett shall purchase used books not adopted for the next academic term or in excess of course requirements at published wholesale prices.
- 9.5 Follett will accept returns in accordance with the following policies:



- a) Non-textbook items in resalable condition may be refunded or exchanged at any time with original receipt.
- b) Textbooks in resalable condition may be refunded with receipt within seven (7) calendar days from the start of classes or within two (2) days of purchase thereafter, including during summer term.
- c) Textbooks purchased during the last week of classes or during exams may be sold back under the book buyback policy.
- d) Computer software may be returned if it is unopened and shrink-wrapped.
- e) In addition, upon proof of drop/add, Follett will accept textbook returns from students who have dropped a course up to thirty (30) days from the start of classes or until the end of the official drop/add period, whichever comes first.
- f) Managers may lengthen refund time periods or allow exceptions to any of the above if circumstances warrant.

9.6 Follett will accept College departmental charges for Store purchases. Purchases must be accompanied by appropriate College forms, and be completed in a manner approved by College. Follett will invoice the department for such charges and College shall pay such invoices within 30 days of receipt.

9.7 In operating the Store, Follett shall accept as a minimum, MasterCard, Visa, Discover and American Express charge cards. Follett will pay all merchant charges associated with acceptance of these credit cards.

## **10. Commission.**

10.1 Follett shall pay commission to College in an annual amount equal to sum of:

- 6.75% of all Gross Revenue less than \$1,500,000; plus
- 7.75% of any Gross Revenue over \$1,500,000, but less than \$3,000,000; plus
- 8.75% of any Gross Revenue over \$3,000,000.

As used in this Section 10, Gross Revenue means all sales made by the Store or the Store's world wide web page, catalog, or mail order function (if any), less refunds, returns, taxes, computer hardware sales, and sales to departments, faculty, staff and other sales at a discount.

In addition, Follett will provide a guaranteed annual income\* of \$75,000 to College. College shall receive either the guaranteed annual income or the commission whichever is greater in any contract year.

*\* The gross revenue % payment formula shall supersede the guarantee rates in any year that comparable enrollment drops by over 5% FTE from the prior academic year or technological/competitive changes dramatically impact store sales.*

10.2 Follett will keep complete and accurate records of all Store transactions in accordance with industry accounting practices and will provide a full report of the bookstore's monthly sales and gross revenue for the preceding period. Follett will preserve records of

store operations for 5 years, and will make them available for review, audit and verification by College at the Store upon request during ordinary business hours.

- 10.3 Follett shall pay the commission calculated in accordance with Section 10.1 monthly, twenty days after the end of the month. Any other payment required to be made by Follett to College under this Agreement shall be made within thirty days of receipt of invoice.

**11. Insurance.**

- 11.1 During the term of this Agreement, Follett shall keep in force, at its own expense, at least the following insurance, all in accordance with this Section 11:

- a) Comprehensive General Liability having a combined single limit of not less than \$1,000,000 per occurrence covering contractual liability and products/completed operations;
- b) Business Automobile Liability having a combined single limit of not less than \$1,000,000 per occurrence covering claims arising out of ownership, maintenance, or use of owned or non-owned automobiles;
- c) Worker's Compensation insurance having limits not less than those required by applicable statute;
- d) Employer's Liability in the amount of at least \$1,000,000.

- 11.2 College, its affiliates, officers, directors, trustees, volunteers, and employees shall be named as additional insureds under the Commercial General Liability policy and the Business Automobile Liability policy.

- 11.3 The insurance shall include waivers of subrogation against College and its affiliates, officers, directors, trustees, volunteers and employees.

- 11.4 Follett shall furnish Certificate[s] of Insurance to College showing the coverage required by this Section 11 within 30 days after execution of this Agreement or before Follett takes possession of the Store, whichever is earlier. The Certificate[s] shall provide that College shall receive 30 days written notice from the insurer in the event of any policy cancellation or termination.

- 12. Indemnification.** Follett shall defend, indemnify and hold harmless College, its Board of Trustees, affiliates, officers and employees from any and all claims, suits, actions, damages, judgments, and costs (including reasonable attorney fees), arising out of any: (i) damage, destruction or loss of any property (including but not limited to College's property); or (ii) injury to or death of any person (including but not limited to any employee of College); which results from or arises out of (x) occupancy or use of the Store by Follett, or (y) acts or omissions of Follett, its officers, agents and employees, in the performance of this Agreement.

13. **Independent Contractor Status.** The relationship of the parties is that of independent contractors, and no tenancy, partnership, joint venture, agency, fiduciary or other relationship is created. Neither party may order any goods nor services, incur any indebtedness, or enter into any obligation or commitment on the other party's behalf.

14. **Nonassignability.** Neither party may assign or sublet this Agreement in whole or in part without the prior written consent of the other party, except that either party may assign this Agreement in its entirety to an affiliate that controls, is controlled by or is under common control with such party.

15. **Notice.** Notices required or permitted by this Agreement shall be deemed given when received if sent by recognized overnight courier or first class mail, postage prepaid, to the following address, or such other address as the party may specify by notice:

To College:

Carlos Fletes  
Vice President for Business Services  
Imperial Valley College  
380 W. Aten Road, Building 10, Room 16  
Imperial, California 92251

To Follett:

Christopher D. Traut  
President  
Follett Higher Education Group  
1818 Swift Drive  
Oak Brook, Illinois 60523

16. **Severability.** If any provision of this Agreement is finally adjudicated illegal, invalid, in excess of the authority of either party hereto, or otherwise unenforceable, then such provision shall be severed, and the remainder of this Agreement shall remain in force as if such adjudicated provision were never included in this Agreement.

17. **Integrated Agreement.** This Agreement: (i) is the sole expression of the understanding of the parties with respect to operation of the Store, (ii) supersedes all prior statements and agreements with respect thereto, and (iii) may not be modified, amended or waived except in writing signed by an authorized representative of the party against whom such modification, amendment or waiver is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date first written above.

**FOLLETT HIGHER EDUCATION  
GROUP, INC.**

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

Christopher D. Traut  
President

**IMPERIAL VALLEY COLLEGE**

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

Carlos Fletes  
Vice President for Business Services

**FIRST AMENDMENT TO BOOKSTORE OPERATING AGREEMENT BETWEEN  
IMPERIAL VALLEY COLLEGE  
AND FOLLETT HIGHER EDUCATION GROUP, INC.**

This First Amendment ("Amendment") is made as of October 1, 2008 between Imperial Valley College ("College") and Follett Higher Education Group, Inc. ("Follett").

WHEREAS: The College and Follett entered into a certain Bookstore Operating Agreement dated June 1, 2002, and now desire to amend the Agreement.

**NOW, THEREFORE:** The Agreement is hereby amended as follows:

1. Section 2 of the Agreement is hereby deleted in its entirety and the following new section 2 is inserted in its place:

*"2. **Term.** This Agreement takes effect October 1, 2008 and continues, unless sooner terminated in accordance with Section 3, until September 30, 2013. Thereafter, unless either party notifies the other in writing at least 150 days before expiration of the initial term, or then-current renewal term, of its intention not to renew, this Agreement shall automatically renew for successive one-year renewal terms under the terms and conditions set forth in this Agreement."*

2. Section 6.17 of the Agreement is hereby deleted in its entirety and the following new section 6.17 is inserted in its place:

*"6.17. Follett agrees to provide \$12,000 in textbook scholarships annually during the term of this Agreement. Scholarships shall be made available to College at the beginning of each College academic year."*

3. Section 9.2 of the Agreement is hereby deleted in its entirety and the following section 9.2 is inserted in its place:

*"9.2 In operating the Store, Follett will charge industry standard, competitive and fair prices, as follows:*

- a) *On new textbooks and trade books, not more than the publishers' list price, or a 25% gross margin (cost divided by .75, inclusive of restocking fees and return penalties) on net price books and list price books sold to Follett at less than a 25% discount off list (inclusive of restocking fees and return penalties), plus a freight pass-through.*
- b) *On e-books, e-coursepacks, coursepacks, text "packages," "kits," "sets," and "bundles," and non-returnable and return-restricted texts, not more than a 30% gross margin (cost divided by .70, inclusive of restocking fees and return penalties), plus a freight pass-through.*
- c) *On used books, including cloth, paperback and others, not more than 75% of the new textbook selling prices.*
- d) *On general merchandise, not more than the normal gross profit margin for similar merchandise in the college bookstore industry."*


4. The second paragraph of Section 10.1 defining Gross Revenue shall be deleted in its entirety and the following new second paragraph shall be inserted in its place:

*“As used in this Section 10, Gross Revenue means all sales made by the Store or the Store’s world wide web page, catalog or mail order function (if any), less refunds, returns, taxes, computer hardware and software sales, commissions earned from rings and graduation regalia, sales based on Follett-funded scholarships, and sales to departmental faculty, staff and other sales at a discount pursuant to Section 6.16, all as reasonably calculated by Follett.”*

5. Except as specifically amended hereby, the Agreement shall continue in full force and effect in all respects.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date first written above.

**FOLLETT HIGHER EDUCATION  
GROUP, INC**

By: 

Name: Thomas A. Christopher

Title: President

Date: 10/27/08

**IMPERIAL VALLEY COLLEGE**

By: 

Name: John Lau

Title: **Vice President for Business Services**

Date: 11/21/08