

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

TERM CONTRACT
96706

OFFICE SUPPLIES
FOR THE TERM DECEMBER 1, 2009 THROUGH MAY 31, 2010

APPENDIX D

See attached County of San Diego contract with Staples and National IPA Agreement. In the event of a conflict between these conditions and the preceding bid and term contract conditions, the preceding City and County of San Francisco contract terms and conditions take precedence.



COUNTY OF SAN DIEGO

**DEPARTMENT OF PURCHASING &
CONTRACTING**

AGREEMENT NUMBER 519042

**BETWEEN THE COUNTY OF SAN DIEGO
AND CORPORATE EXPRESS FOR
JUST-IN-TIME OFFICE & SCHOOL
SUPPLIES SERVICE**

**COUNTY BLANKET PURCHASE AGREEMENT NUMBER 519042
AGREEMENT WITH CORPORATE EXPRESS FOR JUST-IN-TIME OFFICE & SCHOOL
SUPPLIES SERVICE**

This Agreement ("Agreement") is made and entered into on the date shown on the signature ("Effective Date") by and between the County of San Diego, a political subdivision of the State of California ("County") and Contractor Corporate Express, Inc., located at *13225 Danielson Street, San Diego, California, 92064-68443* ("Contractor"), with reference to the following facts:

RECITALS

- A. The County, by action of the Board of Supervisors May 16, 2006, Minute Order No 11, authorized the Purchasing and Contracting Director, pursuant to Article XXIII, Section 401 of the Administrative Code, to award an Agreement for office supplies.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County
- D. The Agreement shall consist of this pro forma Agreement including Special Terms and Conditions; Exhibit A Statement of Work, Exhibit A-1 Contractor's Proposal dated March 16, 2007, Exhibit A-2-Contractor's Best and Final Offer dated April 11, 2007; . Exhibit B Insurance Requirements and Exhibit C, Payment Schedule and Section D-National Intergovernmental Purchasing Alliance Exhibits. .
- E. In the event that any provision of the Pro Forma Agreement or it's Exhibits, A, A-1, A-2 B, C or D, conflicts with any other term or condition, precedence shall be: First (1st) the Pro Forma; Second (2nd) Exhibit B; Third (3rd) Exhibit A; Fourth (4th) Exhibit C; Fifth (5th) Exhibit A-1/A-2.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
PERFORMANCE OF WORK

- 1.1 Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 Contractor's Representative. Contractor's duties under this Agreement shall be performed on behalf of the Contractor by the person identified on the signature page. ("Contractor's Representative"); Contractor represents and warrants that (1) Contractor's Representative has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor's Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor's Representative pursuant to this Agreement are unique; accordingly, Contractor's Representative shall not be changed during the Term of the Agreement without County's written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1, below, "Termination for Default", if Contractor's Representative should leave Contractor's employ, or if, in County's judgment, the work hereunder is not being performed by Contractor's Representative.
- 1.3 Contractor as Independent Contractor. Contractor is, for all purposes of this Agreement, an independent Contractor, and neither Contractor nor Contractor's employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Contractor nor Contractor's employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 Contractor's Agents and Employees or Subcontractors. Contractor shall obtain, at Contractor's expense, all agents, employees and subcontractors required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent,

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employee or subcontractor shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees or subcontractors; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

Any subcontract which is in excess of five thousand dollars (\$5,000) or a combination of subcontracts to the same individual or firm for the Agreement period must have prior concurrence of the Contracting Officer Technical Representative. Contractor shall provide Contracting Officer Technical Representative with copies of all other subcontracts relating to this Agreement entered into by Contractor within 30 days after the effective date of the subcontract. Such subcontractors of Contractor shall be notified of Contractor's relationship to County. "Subcontractor" means any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

- 1.4.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of subcontractors in accordance with this Agreement. No subcontract utilizing funds from this Agreement shall be entered into which has a term extending beyond the ending date of this Agreement.
- 1.4.2 Mandated Clause. All subcontracts shall include the Standard Terms and Conditions required of Contractor herein.
- 1.4.3 County Approval. As identified above, all subcontracts under this Agreement shall have prior written approval of the Contracting Officer Technical Representative.

**ARTICLE 2
SCOPE OF WORK**

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right To Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.
- 2.3 Responsibility For Equipment. For cost reimbursement Agreements, County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other Contractors, County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
 - 2.3.1 Contractor shall repair or replace, at Contractor's expense all County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 2.4 Non-Expendable Property Acquisition. County retains title to all non-expendable property, which Contractor may acquire with funds from this Agreement if payment is on a cost reimbursement basis, including property acquired by lease purchase agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 or more and a normal life expectancy of more than one year without the prior written approval of Contracting Officer Technical Representative. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition. Inventory records on expendable equipment shall be retained, and shall be made available to the County upon request, for at least three years following date of disposition.

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**ARTICLE 3
DISENTANGLEMENT**

3.1 General Obligations

Contractor shall accomplish a complete transition of the Services being terminated from Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any interruption of or adverse impact on the Services or any other services provided by third parties (the "Disentanglement"). Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing all requested information, excluding providing Contractor proprietary information to the new service provider, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information regarding the Services or as otherwise needed for Disentanglement, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services; provided that Contractor shall have no obligation to share Contractor proprietary information with the new service provider. Contractor shall provide for the prompt and orderly conclusion of all work, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee. All services related to Disentanglement shall be performed by Contractor at no additional cost to County beyond what County would pay for the services absent the performance of the Disentanglement services. Contractor's obligation to provide the Services shall not cease until the Disentanglement is satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed.

3.2 Disentanglement Process

The Disentanglement process shall begin on any of the following dates: (i) the date County notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, Paragraph 4.2.3; (ii) the date designated by County not earlier than sixty (60) days prior to the end of any initial or extended term that County has not elected to extend pursuant to the Agreement's, Signature Page, Contract Term; or (iii) the date any Termination Notice is delivered, if County elects to terminate any or all of the Services pursuant to the Agreement, Paragraph 7.1. Subject to Exhibit A Contractor's obligation to perform Services, and County's obligation to pay for Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in this Agreement, Paragraphs 7.1 and 7.4; (B) at the end of the initial or extended term set forth in this Agreement's, Signature Page, Contract Term; or (C) on the Termination Date, pursuant to this Agreement, Paragraphs 7.1 and 7.4 (with the applicable date on which Contractor's obligation to perform the Services expires being referred to herein as the "Expiration Date"); provided, however, that Contractor shall remain obligated to provide Disentanglement services for up to twelve (12) months after any such Expiration Date, at rates that are the lower of the applicable rates set forth in Schedule Exhibit C for the applicable Services. Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of Services in process provided, however, that Contractor's obligation under this Agreement to provide all Services necessary for Disentanglement shall not be lessened in any respect. Contractor shall be required to perform its Disentanglement obligations on an expedited basis, as determined by County, if County terminates the Term pursuant to the Agreement, Paragraphs 7.1 and 7.4.

3.3 Specific Obligations

The Disentanglement shall include the performance of the following specific obligations:

3.3.1 No Interruption or Adverse Impact

Contractor shall cooperate with County and all of the County's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Services, no adverse impact on the provision of Services or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3.3.2 Third-Party Authorizations

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A herein, Contractor shall, subject to the terms of any third-party contracts, procure at no charge to County any third-party authorizations necessary to grant County the use and benefit of any third-party contracts between Contractor and third-party contractors used to provide the Services, pending their assignment to County.

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3.3.3 Return, Transfer and Removal of Assets

3.3.3.1 Contractor shall return to County all County assets in Contractor's possession, pursuant to Paragraph 2.4 of the Agreement.

3.3.3.2 County shall be entitled to purchase at net book value those Contractor assets used for the provision of Services to County, other than those assets expressly identified by the Parties from time to time as Shared Resources, such Contractor assets as County may select. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.4 Transfer of Leases, Licenses, and Contracts

Contractor, at its expense, shall convey or assign to County or its designee such leases, licenses, and other contracts used by Contractor, County, or any other Person in connection with the Services, as County may select, when such leases, licenses, and other contracts have no other use by Contractor. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses, and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall reimburse County for any Losses resulting from any claim that Contractor did not perform any such obligations.

3.3.5 Delivery of Documentation

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including the County Data, held by Contractor, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County Data, for archival purposes or warranty support.

**ARTICLE 4
COMPENSATION**

4.1 The Payment Schedule is in Exhibit C and the compensation is on the signature page. The County is precluded from making payments prior to receipt of services (advance payments). Invoices are subject to the following requirements:

4.2 Fiscal

County will pay Contractor the agreed upon price, pursuant to the Payment Schedule in Exhibit C for the work specified in Exhibit A, Statement of Work.

4.2.1 Accounting System And Fiscal Monitoring. Contractor shall provide and maintain an accounting and financial support system to monitor and control costs to assure Agreement completion.

4.3 Invoices and Payment.

4.3.1 Invoices. Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall submit approved invoices monthly to the COTR for work performed in the monthly period, accordingly. Contractor's monthly invoices shall include a statement certifying whether it is in compliance with Paragraph 8.9 of this Agreement.

4.3.2 Payments. County agrees to pay Contractor in arrears only after receipt and approval by COTR of properly submitted, detailed and itemized original invoice referencing the Agreement number [and a detailed listing of each pay point target, accomplishment, unit price and/or percentages, and showing the appropriate calculation for each, a progress report documenting the status and accomplishments of Contractor during the billing period pursuant to Exhibit C], documenting the total invoiced amount by Contractor. A copy (or copies) of the invoice shall be submitted to the County Auditor and Controller, Room 166, 1600 Pacific Highway, San Diego, Ca 92101. Each invoice so approved and paid shall constitute full and complete compensation to Contractor for the work product submitted and for all work completed during the billing period pursuant to Exhibit A and Exhibit C. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.

4.4 Full Compensation. Pending any adjustments by the COTR, each invoice approved and paid shall constitute full and complete compensation to the Contractor for all work completed during the billing period pursuant to Exhibit

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A and Exhibit C. Contractor shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement.

- 4.5 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:
- 4.5.1. Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
- 4.5.2 Unauthorized Actions by Contractor. Contractor took any action pertaining to this Agreement, which required County approval, without having first received said County approval.
- 4.5.3 Default. Contractor was in default under any terms and conditions of this Agreement.
- 4.6 County Approval: As identified above, all subcontracts under this Agreement shall have prior written approval of the Contracting Officer Technical Representative. County may withhold payment until reports, data, audits or other information required for Agreement administration or to meet County or State reporting or auditing requirements are received and approved by COTR or designee. The County may also withhold payment if, in the County's opinion, Contractor is in non-compliance with this Agreement.
- 4.7 Availability of Funding. The County's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.

County shall have the right to terminate this Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, County and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between County and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.

In the event of termination of this Agreement in accordance with the terms of this Section, Contractor shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Contractor be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

- 4.8 Disallowance. In the event the Contractor receives payment for services under this Agreement which is later disallowed by the County, Contractor shall promptly refund the disallowed amount to County on request, or at its option, County may offset the amount disallowed from any payment due or to become due to Contractor under any Agreement with the County.
- 4.9 Price Adjustments. County and Contractor will periodically, but no less than annually, review all pricing for all items purchased pursuant to this Agreement. If during the course of the agreement the County evaluates another like agreement with like services, like products, like volumes and like terms and conditions and feels our current agreement is not competitive/beat the like agreement then the County and Contractor will renegotiate the terms of the agreement.

**ARTICLE 5
AGREEMENT ADMINISTRATION**

- 5.1 County's Agreement Administrator. The Director of Purchasing and Contracting is designated as the Contracting officer ("Contracting Officer") and is the only County official authorized to make any Changes to this Agreement. The County has designated the individual identified on the signature page as the Contracting Officer's Technical Representative ("COTR")
- 5.1.1 County's COTR will chair Contractor progress meetings and will coordinate County's Agreement administrative functions. The COTR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required. The COTR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.

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- 5.1.2 Notwithstanding any provision of this Agreement to the contrary, County's COTR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements, which do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement period or the total Agreement price. Each AA shall be in writing and signed by COTR and Contractor. All inquiries about such AA will be referred directly to the COTR.
- 5.2 Agreement Progress Meeting. The COTR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance. At these meetings the COTR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COTR and the Contractor. Should the Contractor not concur with the minutes, the Contractor shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

**ARTICLE 6
CHANGES**

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc.) and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by an such order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly
- 6.2 Claims. Contractor must assert any claim for adjustment under this clause within 30 days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

**ARTICLE 7
TERMINATION**

- 7.1 Termination For Default. Upon a party's breach of this Agreement, the other party shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, the non-breaching party will send the breaching party written notice specifying the cause. The notice will give breaching party 15 days from the date the notice is issued to cure the default or make progress satisfactory to the non-breaching party in curing the default, unless a different time is given in the notice. If non-breaching party determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, non-breaching party may terminate this Agreement immediately upon issuing oral or written notice to the breaching party without any prior notice or opportunity to cure. In the event of such termination, the County may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price.
- 7.1.1 If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.
- 7.2 Termination For Convenience. The County may, by written notice stating the extent and effective date, terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for performance until such termination:
- 7.2.1 The unit or pro rata price for any delivered and accepted portion of the work.

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- 7.2.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 7.2.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 7.3 Remedies Not Exclusive. The rights and remedies of the parties provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

ARTICLE 8

COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, and County laws and regulations.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COTR or from the County of San Diego Internet web-site (www.sdcounty.ca.gov).
- 8.5 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.5.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
- 8.5.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.5.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.5.1.3 Shall not sell, offer, or provide alcohol or a drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.5.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- 8.5.3 The County may terminate for default or breach this Agreement, and any other Agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.
- 8.6 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors:

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Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and

Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements.

- 8.7 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County Facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.
- 8.8 Debarment And Suspension. As a sub-grantee of federal funds under this Agreement, Contractor certifies that it, and its principals:
- 8.8.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency.
- 8.8.2 Have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 8.8.3 Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 8.8.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State, or local) terminated for cause or default.

ARTICLE 9

CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent Agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement.
- 9.2 Conduct of Contractor; Privileged Information.
- 9.2.1 Contractor shall inform the County of all the Contractor's interests, if any, which are or which the Contractor believes to be incompatible with any interests of the County.
- 9.2.2 The Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or

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organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.

- 9.2.3 Contractor shall not use for personal gain or make other improper use of privileged information, which is acquired in connection with his employment. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.
- 9.2.4 The Contractor, or employees thereof, shall not offer directly or indirectly gifts, gratuity, favors, entertainment, or other items of monetary value to an employee or official of the County.
- 9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:
- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body.
- 9.3.2 Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;
- 9.3.3 Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4 Profit-making firms or businesses in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.

**ARTICLE 10
INDEMNITY AND INSURANCE**

- 10.1 Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement and arising either directly from any negligent or willful act, error, or omission of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.
- 10.2 Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

**ARTICLE 11
AUDIT AND INSPECTION OF RECORDS**

The County shall have the audit and inspection rights described in this section.

- 11.1 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

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- 11.2 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.2.1 and 11.2.2, below:
- 11.2.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- 11.2.2 Record which relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer.
- 11.3 Subcontracts. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the Contracting parties and the Contracting officer under the County's prime Agreement.

**ARTICLE 12
INSPECTION OF SERVICE**

- 12.1 Subject to Inspection All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.
- 12.2 Specification and Requirements. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by Agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

**ARTICLE 13
USE OF DOCUMENTS AND REPORTS**

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement shall be kept as confidential by both Contractor and the County unless disclosure is otherwise authorized or required by law and shall not be made available to any individual or organization by either party without the prior written approval of the other party.

**ARTICLE 14
RESERVED**

**ARTICLE 15
DISPUTES**

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the

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Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law.

ARTICLE 16

GENERAL PROVISIONS

- 16.1 Assignment and Subcontracting. Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld. The Contractor shall make no Agreement with any party for furnishing any of the work or services herein contained without the prior written prior concurrence of the COTR, pursuant to Paragraph 1.4.
- 16.2 Contingency. This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.
- 16.3 Entire Agreement. This Agreement, together with all Sections attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 Sections and Exhibits: All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 Further Assurances: Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 Governing Law: This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings: The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification; Waiver Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement: The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 Notices. Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three (3) business days after deposit in the U.S. Mail, as the case may be to the COTR and Contractor's Representative identified on the signature page..
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence of each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or State or

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national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.

- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

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SIGNATURE PAGE

AGREEMENT TERM. This Agreement shall be effective this 1st day of July 2007 ("Effective Date") and end on **June 30, 2008** ("Initial Term") period of 1 year.

OPTION TO EXTEND. The County's option to extend is for four (4) increments of one (1) year(s) each for a total of four years beyond the expiration of the Initial Term, not to exceed June 30, 2012, pursuant to Exhibit C Payment Schedule or adjustment factor identified. *Unless County notifies Contractor in writing, not less than 30 days prior to the expiration date that they do not intend to renew the Agreement; the Agreement will be automatically renewed for another year.*

Options To Extend For One To Six Additional Months At End Of Agreement. County shall also have the option to extend the term of this Agreement in one or more increments for a total of no less than one (1) and no more than six (6) calendar months at the discretion of the County Purchasing and Contracting Director. Each extension shall be affected by written Agreement amendment delivered to Contractor no less than fifteen (15) calendar days prior to expiration of any Agreement term.

The rates set forth in Article 4, Exhibit C, or other pricing section of this Agreement shall apply to any option exercised pursuant to this option clause unless provision for appropriate price adjustment has been made elsewhere in this Agreement or by Agreement amendment. All payments are subject to "Availability of Funds."

COMPENSATION: Pursuant to Exhibit C, County agrees to pay Contractor a sum not to exceed XXXXX (\$XXXX) for the initial term of this Agreement and XXXXX (\$XXXX) for each of the XXX one year option periods, for a maximum Agreement amount of _____ (\$XXXX), in accordance with the method of payment stipulated in Article 4.

COTR. The County has designated the following individual as the Contracting Officer's Technical Representative ("COTR")

*Evie Stainbrook, Senior Procurement Specialist
Department of Purchasing & Contracting
10086 Willow Creek Road, Suite 150
San Diego, CA 92131-1699
Evie.Stainbrook@sdcountry.ca.gov
858-694-2941*

CONTRACTOR'S REPRESENTATIVE. The Contractor has designated the following individual as the Contractor's Representative.

*Ken Rohner, Sales Manager
13225 Danielson Street
Poway, CA 92064
Ken.Rohner@cexp.com
Fax: 858-859-6761*

IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date first set forth above

COUNTY OF SAN DIEGO

By: Winston F. McColl
WINSTON F. McCOLL, Director
Department of Purchasing and Contracting

Date: 5/18/2007

CORPORATE EXPRESS, INC.,

By: [Signature] RUPSA
Name and Title

Date: 5.18.07

APPROVED AS TO FORM AND LEGALITY

By: _____ Date: _____
Senior Deputy County Counsel

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The Contractor shall provide items and services of this contract to non-profits organizations under the authority of this provision. The Contractor is responsible for confirming that any non-profit organization has a current contract with the County of San Diego or political subdivision. The County will incur no financial responsibility in connection with order issued under the authority of this provision. The ordering organization shall be solely responsible for verifying they are currently under contract with the County.

1. DEFINITIONS

A. County: Wherever in the contract the word "County" appears, it includes all participating agencies, except as follows:

1. When formally expressed as "County of San Diego."
2. When appearing and used in conjunction with the, Standard Terms and Conditions (Proforma Agreement).
3. When used in conjunction with administration of the contract. Only the County has contract administration authority. The administrative responsibility of other public agencies is limited to administration actions related to the orders they place under the contract.

B. General: MSRP (Lots 1, 2, 3, 4, and 5) is defined as the Manufacturers Suggested Retail Price.

2. CONTRACT PERIOD AND OPTION TO EXTEND THE CONTRACT TERM

The period of performance for this Agreement is a 12 month initial term with four (4) one year County of San Diego options.

3. PHASE IN PERIOD

Except as otherwise specified, the Contractor shall provide the following items within sixty (60) calendar days from date of contract award. Distribution of instructions, catalogs, price lists and all other resources in order to be in compliance and perform in accordance with the contract requirements identified herein. These items are to be provided at no cost to the County and public agencies using this contract.

The date of complete compliance for contract support to public agencies using this Agreement, but not specifically named in the Agreement at the time of award shall be the date agreed to by such public agencies and the Contractor.

4. BRAND NAME OR EQUAL

The Contractor supplying alternate or recycled content product items should select items with care. In the event the County determines during the contract periods that the alternate or recycled content product are not equal to the proposal items, the Contractor shall provide the proposal product items at the same price submitted on the alternate or recycled content product item. The County determination that the alternate or recycled content product is not equal to the proposal product will be conclusive.

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If items called for in this solicitation have been identified in the Schedule by a "brand name or equal" description; such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products (including products of the brand name manufacturer other than the one described by the brand name) will be considered for award if such products are determined by the County to meet fully the salient characteristic requirements listed in the request.

- a) Unless the Contractor clearly indicates in the response that an "or equal" product is being offered, the proposal shall be considered as offering the brand name product specified.
- b) If the Contractor furnishes an "equal product", the brand name, if any, of the product to be furnished shall be clearly identified. The determination as to equality of the product offered will be the responsibility of the County and will be based upon the information furnished by the Contractor, or identified in the response to the solicitation as well as other information reasonably available to the County.

CAUTION TO CONTRACTOR: The County is not responsible for locating or securing any information that is not identified in the response to the solicitation and reasonably available to the County.

- c) Modifications proposed after receipt of response to the solicitation to make a product conform to a brand name product referenced in the Request for Proposal will not be considered.
- d) The Contractor understands and agrees by submitting a response to this solicitation that the determination of the County of "or equal" shall be conclusive.

5. ORDERING AND DELIVERY

- a) This is a requirements contract for the supplies specified, and effective for the period stated in Section 2 above. The quantities and/or value of supplies stated in the respective price schedules (Lot 1-5) are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, or if the County's requirements or those of any other public agency do not result in orders in the quantities described as "estimated" in the respective price schedule, that fact shall not constitute the basis for an equitable price adjustment. The estimated quantities and/or values in the respective price schedule may not include all the additional potential quantities and/or values as contemplated by the Public Agency provision. The Contractor is required to comply with all contract requirements to the same extent as if the additional potential quantities and/or values had been included in the estimated quantities and/or values stated in the respective price schedules.
- b) There are approximately 700 ordering departments and offices in the County. A Blanket Purchase Order will be issued to the Contractor by the Contracting Officer, which will allow authorized County departments and offices to issue Suborders for items in Lot 1, 2, 3, 4, and 5. Each ordering department or office must reference the Blanket Purchase Order on their Suborder when placing an order. County departments will also use a County Procurement card as method of payment. Procurement card expense incurred by accepting Procurement Card, such as Visa, shall be at the expense of the Contractor.

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- c) The County will place pre-priced orders under this contract directly with the Contractor. Orders may be placed by electronic transmission, US Mail, facsimile, and telephone. Facsimile and US Mail Suborders will be submitted to the Contractor using a Contractor provided form. The Contractor shall accept all orders for items placed under this contract during the hours of 8:00 AM through 5:00 PM, Monday through Friday, excluding County holidays. The Contractor shall annotate each packing slip with the date the order was received.
- d) The County will provide the Contractor with a list of delivery point codes and the name of the responsible contact person for each County organization authorized to place Suborders or use Procurement Cards. Other public agencies will provide the Contractor with their authorized delivery points and the names of individuals authorized to place orders. The estimated total quantity of delivery locations under this contract is approximately 710 locations.
- e) If a delivery day falls on a County holiday, the Contractor shall make delivery on the first following workday. The Contractor may provide more frequent delivery at no additional cost to the County.
- f) The Contractor shall satisfactorily deliver not later than the Required Delivery Date (RDD) those Lots 1, 2, 3, and 4 items that were placed on order are to be delivered next day. Lot 5, non-stock items are to be delivered in not less than three (3) business days.

Satisfactory performance includes compliance with the provision entitled, Fill Rates, which applies to both LOT 1, 2, 3, 4, and 5.

- g) Deliveries will only be made to authorized delivery points. Office and School Supplies will be delivered "in place" in coordination with the delivery point unless the "in place" requirement is waived by the delivery point. The County has the right to add, delete or change authorized Delivery Point Master Listings (ATTACHMENT 2). The Contractor shall make no additions, deletions or changes to the County Delivery Point Master Listing without the written approval of the Contracting Officer's Technical Representative (COTR). The Contractor shall be solely responsible for any deliveries made to a location other than those included in the County Delivery Point Master Listing or authorized by another public agency. The County will not be responsible for payment for deliveries to unauthorized delivery points.
- h) The Contractor shall provide, at no charge to the County, a toll free telephone number that all departments and offices can dial to place orders, obtain inventory availability, cancel orders, and obtain information on delivery or shortage problems. The Contractor shall also provide, at no charge to the County, a toll free facsimile telephone number that County departments and offices can use to place orders.
- i) Items ordered shall be packaged, marked and delivered to the authorized delivery point code requested in the order. Ordered items shall be packaged in such a way as to secure items from breakage and pilferage.
- j) Two legible copies of the packing list shall accompany the order. Each box in the order shall display the designated delivery point code address, purchase order/order number, and

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number of boxes in the shipment. The packing slip shall reflect the following minimum information:

- Contractor's name, address and telephone number.
- Contractor's invoice number and date.
- Purchase Order/Order Number/Procurement Card holder's name
- Ship to address.
- Bill to address.
- Sales tax amount.
- Total invoice amount

- **Lot 1, Core Items.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, unit price, and extended price for each line item ordered and shipped.

- **Lot 2, Printer and Toner Cartridges.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, unit price, and extended price for each line item ordered and shipped.

- **Lot 3, Multi – Purpose Paper.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, County's price and total extended price for each line item ordered and shipped.

- **Lot 4, Proprietary In-Stock Item Catalog.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, Contractor's retail price, applicable blended discount, County's unit price, and extended price for each line item ordered and shipped.

- **Lot 5, Proprietary Non-Stock / Special Order Item Catalog.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, Contractor's retail price, applicable blended discount, County's unit price, and extended price for each line item ordered and shipped..

The ordering departments shall have five (5) working days following receipt of order to notify the Contractor of order discrepancies (wrong item, shortage, overage, etc). The Contractor shall correct the discrepancy no later than the next scheduled delivery to the ordering department and at no additional cost to the County.

- k) The Contractor shall deliver Lot 3 Multi-Purpose Paper desktop if ordered by the carton and to the facility loading dock if ordered by the pallet.

6. ORDER VALUES REQUIREMENTS

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Order may additionally include use of County approved procurement/purchase card.

MINIMUM ORDER VALUE: When an individual delivery point requires supplies covered by this Agreement and the total value of the order(s) involved is less than \$25.00, not including sales tax, the Contractor is not obligated to accept the order(s) to furnish those supplies; except, the Contractor may accept orders in an amount less than the minimum order, and in so doing may charge a separate delivery fee not to exceed \$10.00 for the delivery. The individual placing the order or first order, if more than one order is involved, must be advised by the Contractor of the application of the delivery fee at the time the order is accepted, and the delivery charge must be shown on the order as a separate line item.

MAXIMUM ORDER VALUE:

The Contractor shall not accept an order from the County which contains any item which has a unit price of \$1,000 or more, excluding tax.

The Contractor shall not accept any order from the County for a combination of items in excess of \$5,000, excluding tax.

The Contractor shall not accept any order from the County, regardless of cost, for microcomputers and related peripherals, software, and any items not explicitly included in the County approved Contractor's In-stock and Non-stocked proprietary catalogs. The Contractor shall not deliver these commodities in the event that a County Department inadvertently places an order. The County will not reimburse the Contractor for any cost associated with these commodities including restocking charges and any payment.

Limitations on orders issued by Public Agencies other than the County will be specified by such Public Agencies.

7. RETURNS AND REFUNDS

8. CONTRACTOR PERFORMANCE MEASUREMENT AND FILL RATES APPLICABLE TO LOTS 1, 2, 3, 4, and 5.

Orders will be complete at the time of delivery. All items must be shipped exactly as ordered. Items not available shall be indicated on the packing slip. Partial deliveries will be allowed. Back orders will be allowed for any quantities not delivered on their Required Delivery Date (RDD). Rentals or leases are not allowed. The Contractor must apply the diligence and resources to ensure items on orders are delivered on the RDD, and in compliance with contract provisions. In accordance with the Default Clause of the contract, the minimum acceptable Fill Rate for completion of each Suborder is as follows:

The cumulative Contractor performance on orders for any individual month must not be less than 100% complete delivery of the total items within each individual line item, on not less than 97% of the total line items ordered that month. For example, if an order is placed for 100 line items and one line item is partially filled with the balance put on back-order, the entire line item is considered a back-order, thereby achieving a 99% fill rate.

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The cumulative Contractor performance on orders for any six (6) consecutive months must not be less than 100% complete delivery of the total items within each individual line item, on not less than 98% of the total line items ordered that six consecutive month period.

9. CATALOGS AND ORDERING FORMS

Unless otherwise excepted by the County, the Contractor shall provide each authorized delivery point code location with a current copy of the County approved Lot 1 Core Items List and applicable discounts, Lot 2 Printer and Toner Cartridges List and applicable discounts, Lot 3 Multi-Purpose Paper List and applicable discounts, County approved Lot 4 In-Stock Proprietary Catalog with (1) Blended Discount; County approved Lot 5 Non-Stocked / Special Order Proprietary Catalog with (1) Blended Discount; software and access to the electronic catalog and electronic ordering, as described herein is to be provided at no cost to the County.

Lot 1 Core Item List, Lot 2 Printer and Toner Cartridge List, and Lot 3 Multi-Purpose Paper List. The Contractor shall provide an indexed, loose leaf, three (3) hole punched and enclosed in a three (3) ring, 1" capacity "D" ring vinyl binder with appropriate dividers. At no cost to the County, the cover of the binder shall include the County "seal" and other appropriate office supply catalog identification. The spine of the binder shall also reflect appropriate supply catalog identification, in 12 font print minimum. Estimated catalog quantity, 1000 per year.

The Contractor must submit a draft of the Lot 1 Core Item Price List, Lot 2 Printer and Toner Cartridge Price List, and Lot 3 Multi-Purpose Paper Price List to the COTR for approval of binder design and details. The binder and binder layout shall be submitted to the COTR for review and approval prior to printing. After receipt of the draft from the Contractor, the COTR shall have seven (7) calendar days in which to review the proposed Price List and either provide comments or approval. After initial approval, any subsequent changes must be approved, in writing, by the COTR prior to implementation by the Contractor.

Lot 4 and Lot 5 Catalogs. The Contractor must maintain a standard commercial proprietary catalog/catalog system equal in quality, presentation and essential coverage, as determined by the COTR, to the catalog/catalog system forming the initial contract award. The catalog/catalog system shall be the same as that used by the Contractor in conducting general commercial business. The County approved Lot 4 In-Stock Proprietary Catalog is identified as Contractor's In-Stock Office Products Catalog. The County approved Lot 5 Non-Stocked / Special Order Catalog is identified as the Contractor's Non-Stocked / Special Order Products Catalog. The County approved In-stock and Non-stock catalogs must clearly differentiate what is "In-stock" and "Non-stock" and jointly consist of not less than 15,000 distinct line items. In addition, each County approved catalog must include a cover page identifying the blended percentage on all items on all items in the Lots 4 and 5.

The Contractor's electronic catalog shall include the approved Lot 1 Core Item List, Lot 2 Printer and Toner Cartridge List, Lot 3 Multi-Purpose Paper List; Lot 4 approved In-Stock Catalog, and Lot 5 Non-Stocked / Special Order Catalog. The electronic catalog must be available for inquiry and placement of orders sixty (60) days after date of contract award and display the following minimum information:

* County Item Number (Lot 1, Lot 2, and Lot 3)

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- * Item description
- * Lot 4 and 5: Lowest Unit of Measure, e.g., "box"
- * Manufacturer's number
- * Catalog item number
- * Catalog page where item can be located
- * Applicable contract or proprietary catalog number/identifier
- * Lot 1 and Lot 2: MSRP, Discount off MSRP, County unit price
- * Lot 4 and Lot 5: Proprietary catalog list price, blended discount, County unit price
- * Sales tax
- * Total cost of order

Unless otherwise excepted by the County, the Contractor shall provide each authorized delivery point code location with an ordering package consisting of the instructions on "How-To-Use-Just-In-Time" which will include delivery requirements; a current copy of the County approved Lot 1 Core Item List, Lot 2 Printer and Toner Cartridge List, and Lot 3 Multi-Purpose Paper List, County approved Lot 4, In-Stock Catalog and price schedule; County approved Lot 5 Non-Stocked / Special Order Catalog and price schedule. Additional catalogs, as required, are to be provided at no additional cost to the County.

Order Form. At the expense of the Contractor, the Contractor shall design and provide the County with order forms to use for placing orders so that orders may be sent to the Contractor. The COTR shall be provided a proof of the form for review and approval prior to implementation. The order form shall contain the information shown on the sample.

10. PRICES AND PRICE ADJUSTMENTS

The prices and pricing of Lot 1, Lot 2, Lot 3, Lot 4, and Lot 5 are inclusive inside delivery, and no payment or reimbursement other than the prices of the delivered items and applicable taxes will be made to the Contractor for performing under this contract. Any price adjustments authorized by this article will not be retroactive.

County pricing is based on current MSRP for Lot 1 and Lot 2 less firm County Discount submitted by the Contractor. County pricing is based on current catalog MSRP list prices for Lots 4 and 5, less firm County Blended Discount submitted by the Contractor. County discounts shall remain firm for all contract term periods identified on C-2.

Price adjustment on a proposal product, when an alternate item is not acceptable to the County, will be based on applying the percentage (%) discount difference between the Proprietary MSRP item price and the County purchase price submitted by the Contractor on the alternate product.

The County may add or delete items under Lot 1 Core Item List during the initial or County option periods. Discontinued items, addition of like and/or unlike items shall be as follows:

- Discontinued items shall be replaced with like items, at the option of the County, using the same percentage discount provided on like items offered in Lot 1 Core Item List of Office and School Supply Products and Prices (Exhibit C).
- Adding of like items shall be priced using the same percentage discount offered in Lot 1 Core item List of Office and School Supply Products and Prices (Exhibit C).

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- Adding of unlike items shall be priced based on the County and the Contractor's mutual agreement.
- The County has the right to remove any item from the Lot 1 Core Item List of Office and School Supply Products and Prices (Exhibit C) during the term of this contract.

NOTE: At the County's request, the Contractor shall provide written documentation of current MSRP or Catalog list price on any items subject to purchase by the County. This will include date of Manufacturer's list price change.

Any item ordered by the County as a Lot 4 or Lot 5 item and is specifically identified as a Lot 1, Lot 2, or Lot 3 item shall be invoiced at the lowest applicable price identified in Lot 1, Lot 2, or Lot 3.

11. PAYMENTS AND INVOICES

The County will use a streamlined payment process which utilizes a two part priced packing list. A two part priced packing list must accompany the delivery. The Contractor shall retain a copy of the packing list reflecting the date, name and signature of the individual accepting delivery. Accounts Payable will make payment upon receipt of the priced packing list and related approval from order receiver. Contractor will have the ability to interface with the County Oracle EDI electronic payment process.

Order may additionally include use of County approved procurement/purchase card.

The Packing List shall be a two-part form. The form will serve a dual purpose. One part will serve as the "packing list". The second part will serve as the "invoice". Both parts shall include the following minimum information:

- Contractor's name, address and telephone number.
- Contractor's invoice number and date.
- Purchase Order/Order Number/Procurement Card holder's name
- Ship to address.
- Bill to address.
- Sales tax amount.
- Total invoice amount

- **Lot 1, Core Items.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, unit price, and extended price for each line item ordered and shipped.

- **Lot 2, Printer and Toner Cartridges.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, unit price, and extended price for each line item ordered and shipped.

- **Lot 3, Multi – Purpose Paper.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, County's price and total extended

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price for each line item ordered and shipped.

- **Lot 4, Proprietary In-Stock Item Catalog.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, Contractor's retail price, applicable blended discount, County's unit price, and extended price for each line item ordered and shipped.

- **Lot 5, Proprietary Non-Stock / Special Order Item Catalog.** Order item number, current catalog number, catalog item number, description, unit of issue, quantity ordered, quantity shipped, quantity back ordered, Contractor's retail price, applicable blended discount, County's unit price, and extended price for each line item ordered and shipped.

The Contractor shall provide Accounts Payable and the COTR an aged listing on unpaid priced packing list delinquencies every thirty (30) days reflecting priced packing lists over forty-five (45) days old supported by a copy of the priced packing list showing a proof of delivery signature. The Contractor may reject orders from delinquent ordering delivery points, and if necessary, all delivery points within the delinquent department or office. The Contractor shall provide the COTR two working days advance notice of anticipated order rejection action. Delinquency lists shall be forwarded to:

County of San Diego, Auditor and Controller

Accounts Payable Division (Room 306)
1600 Pacific Highway
San Diego, Ca 92101

And

County of San Diego, Department of Purchasing and Contracting
COTR - JIT Office and School Supply Service Contract
10089 Willow Creek Road Suite 150
San Diego, Ca 92131-1699

Payment shall be "Net 30 Days" from date of complete delivery of all items ordered under the referenced order. Payment discounts will likewise be calculated from the date of complete delivery of all items ordered under the referenced order. Payment discounts of less than 30 days will not be considered in the cost evaluation of the proposal.

The Contractor and the other Public Agencies will determine payment and invoice provisions for public agencies other than the County.

12. PRICE GUARANTEE/ADJUSTMENT

County and Contractor will periodically, but no less than annually, review all pricing for all items purchased pursuant to this Agreement. If during the course of the agreement the County evaluates another like agreement with like services, like products, like volumes and like terms and conditions and feels our current agreement is not competitive/beat the like agreement then the County and Contractor will renegotiate the terms of the agreement.

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13. CONFLICT BETWEEN CONTRACT PROVISIONS

In case of conflict between the Special Terms and Conditions, and any other provision of the contract, including the Contractor's incorporated proposal, the Special Term or Condition will apply.

14. PRODUCT USAGE REPORTS (For individual agencies as requested)

The Contractor shall provide at minimum the following quarterly reports to be submitted to the COTR, County within (30) calendar days from the end of the reporting period. All reports are to be provided in hardcopy and electronic format acceptable to the County.

- 1) Core Item List (Lot 1), Printer and Toner Cartridges List (Lot 2), and Multi-Purpose Copy Paper (Lot 3) purchases in order by; Item List Item Number, Product Description, Manufacturer Number, Contractor's Stock Number, Unit of Measure, Total Orders, Total Quantity Ordered, Unit price, and Total Extended Price for current reporting period and cumulative purchases year to date.
- 2) In-Stock (Lot 4) and Non-Stock / Special Order (Lot 5) purchases will be reported separately in two (2) parts. Items purchases in order by; Item List Item Number, Product Description, Manufacturer Number, Contractor's Stock Number, Unit of Measure, Total Orders, Total Quantity Ordered, Unit price, Blended Discount, and Total Extended Blended Discounted Price for current reporting period and cumulative purchases year to date.
- 3) Special report to be provided annually within 90 days of end of contract period for Core Items (Lot 1) listing all current Core Item numbers, County item descriptions, unit of measure, manufacturer, manufacturer's stock number and most current twelve months usage.
- 4) The Contractor shall provide a quarterly report on the Contractor's performance measurement and fill rates in accordance with requirements identified in Section C-7 above.
- 5) Additionally, the County will require the successful Contractor to provide annually or on an "as required basis" Public Agencies reports listing the following. These reports are to be provided within (30) days of County request.
 - Individual Department Reports listing the same information as identified in quarterly reports.
 - Individual Department Reports listing credits and returns on Lot 1 through 5.

The Contract shall provide all reports at no cost to the County and will be submitted in the format acceptable to the County (i.e. hardcopy and electronic format).

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SPECIAL TERMS & CONDITIONS SPECIFIC TO PRINT & TONER CARTRIDGES

1. SPECIAL PROVISIONS

Pertaining to this Agreement, the term "Remanufactured Print and Toner Cartridge" is defined as a cartridge which has been completely disassembled and inspected to determine any problem areas. Worn components are replaced with new parts; all sections are completely cleaned and a fresh supply of ink or toner is added before the cartridge is resealed.

2. WARRANTY

The Contractor shall replace any unacceptable cartridge within 2 (two) business days, if return is made within 30 days of delivery, with the exception of stockless environments where if the cartridge is damaged or defective, returns will be accepted within 90 days of delivery.

Contractor shall pass through to County any applicable manufacturer warranties, to the extent transferable. Contractor shall provide cartridges from suppliers who give the following or better warranty regarding damage caused by defective cartridges: supplier shall warranty that if under normal use, its products have been the source of damage to County's equipment, supplier shall reimburse the County for the cost of repairs (adequate documentation from an authorized repair center required). For clarity, to the extent that Contractor aligns with a supplier that does not provide this level of warranty, Contractor shall assume the cost of providing such repair or replacement service for the equipment.

3. GENERAL SPECIFICATIONS

Any remanufactured cartridge found defective shall be replaced by the Contractor free of charge regardless of the amount of ink or toner remaining in the cartridge if returned within the specified timeframe above. The Contractor shall replace the defective cartridge with either another remanufactured cartridge or an OEM cartridge at the discretion of the department. Defective cartridges shall be replaced within two (2) business days after the Contractor is notified.

All remanufactured print and toner cartridges shall be guaranteed to perform to the original equipment manufacturer's (OEM) specifications and to the satisfaction of the County. Cartridges shall equal or exceed the yield of the OEM specification.

4. RECYCLING

The Contractor shall provide in-person or third party collection of all used and empty printer and toner cartridges.

The Contractor shall recycle end-of-life printer and toner cartridges and provide the County with details of its recycling program upon request.

The Contractor shall ensure that remaining ink and toner in used cartridges, and all cartridges, casings, and parts not remanufactured or used to create a remanufactured cartridge, are recycled or disposed of in a manner that complies with all environmental and human health and safety laws and regulations.

At the County's request, the Contractor shall provide manifests and any other documentation needed to confirm the proper disposal of material.