

EXECUTION COPY

Office Supplies – Office Depot Credit
For the Term July 1, 2011 Through June 30, 2013

GENERAL CONDITIONS

55. Severability. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

56. Emergency - Priority 1 Service. In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for items and services ordered during an emergency and not covered under the awarded contract.

57. Not used

58. Term Bid – Quantities. This is a term, indefinite quantities contract. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the contract. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may make minor purchases of items requested in City's advertisement for bids or contractor's bid from other vendors when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this contract.

59. First Source Hiring Program

NOT USED

60. Earned Income Credit (EIC) Forms.

NOT USED

61. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year

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have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

62. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this contract. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

63. Preservative-Treated Wood Containing Arsenic.

NOT USED

64. Not used

65. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

66. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

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Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this contract shall constitute a default of this Contract.

67. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

END OF GENERAL CONDITIONS

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68. Purpose. The purpose of this contract is to provide Office Supplies to the City and thereby allow the City to use the credit from Contractor according to the Settlement Agreement (see Attachment A).

69. Pre-Bid Conference.

NOT USED

70. Specifications All items shall be the same as reflected in the State of Florida Contract item file as updated and approved by the State of Florida.

71. Bidder's/Contractors Qualifications and Requirements

a. NOT USED

b. Contractor will be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor must provide personnel with in-depth technical knowledge of the products the Contractor is providing under this contract, to answer questions and offer any assistance required by City personnel, during City business hours (7:00 A.M. – 5:00 P.M.).

c. NOT USED

d. NOT USED

e. NOT USED

f. Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding handicapped persons' accessibility.

g. NOT USED

h. NOT USED

i. The City reserves the right to inspect Contractor's place of business, including Contractor's existing stock during the contract term, to aid Purchaser in determining Contractor's ability to satisfy the terms and conditions of the contract.

j. NOT USED

k. Contractor must be capable of producing usage reports required under General Condition No. 50 of this contract.

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72. Delivery

NOT USED

73. Price. Prices on all items shall be the same as reflected on the State of Florida Contract price list as updated and approved by the State of Florida.

74. Bid Evaluation.

NOT USED

75. Adjustment of Bid Price for Sales Tax.

NOT USED

76. Award.

NOT USED

77. Awarded Items. If during the term of the Contract, a item offered under the State of Florida Contract is determined to be unacceptable for a particular use by the City, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be removed from the City's available product assortment without penalty to the City. The City's sole obligation to the Contractor is payment of deliveries made prior to the cancellation date. City shall give Contractor ten days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, Contractor will replace or substitute such item in accordance with the State of Florida Contract

78. Ordering. Items to be furnished under this contract shall be ordered through Office Depot's on line ordering system only. All orders must be placed and approved by Authorized Approvers (see Attachment A, Settlement). All orders must ship to Authorized Addresses (see Attachment A, Settlement). No phone, fax, in store or will call orders are allowed on this contract.

79. Payment. The purpose of this contract is specifically to use the credit granted to the City by Office Depot (see Attachment A, Settlement). Office Depot agrees to relieve the credit for all products ordered in accordance with the prices quoted in the State of Florida contract. Relief of the credit will be in arrears, for **completed orders**, throughout the term of the contract. Statements submitted by Office Depot must be in a form acceptable to Purchasing and Controller (see Attachment B). All transactions between the City and Office Depot shall be subject to the audit by the City.

80. Additional Items. This contract is limited to the items covered by the State of Florida Contract. No additional items may be added.

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81. Environment Code Chapter 5, Resource Conservation Ordinance. This contract is for printing, or writing paper products or services. Contractor certifies that these paper products meet the minimum content of post-consumer material set forth in §506 of the Environment Code. This bid is for printing. In the performance of the contract, Contractor agrees to use paper products meeting the standards set forth in §506 of the Environment Code, and unless excepted by written permission of City, to print on both sides of the paper. For more information, call the buyer whose name appears on the bid package.

82. Bid Security

NOT USED

83. Performance Bond

NOT USED

84. Fidelity Bond

NOT USED

85. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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c. Contractor hereby agrees to waive Workers' Compensation subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to:

Director, Office of Contract Administration
Purchasing Division
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

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j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

86. Failure to Execute Contract Prior to beginning work on this contract Office Depot will deliver the specified insurance certificates to City.

87. Sweatfree Procurement

NOT USED

88. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

89. Bid Submittal Instructions.

NOT USED

END OF SPECIAL CONDITIONS

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

96708

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In WITNESS THEREOF, the parties by their duly authorized representatives, have caused this Contract to be executed as of the Effective Date.

OFFICE DEPOT, INC.

By: *Patrick Welch*
Name: Patrick Welch
Title: Regional Vice President
Date: 8/12/2011

CITY AND COUNTY OF SAN FRANCISCO

By: *Jennifer Browne*
Name: Jennifer Browne
Title: Assistant Director
Date: 8/9/11



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

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ATTACHMENT A

Settlement Agreement and Covenant Not to Sue between the City and County of San Francisco and
Office Depot, Inc, dated December 13, 2010

SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE

This Settlement Agreement and Covenant Not To Sue ("Agreement") is entered into on December 13, 2010, in San Francisco, California, by and between the City and County of San Francisco (together with its Board of Supervisors and any and all of its agencies, boards, commissions, committees, departments, divisions, officials, programs, projects, and task forces) (the "City"), and Office Depot, Inc. The City and Office Depot sometimes are referred to herein as the "Settling Parties."

RECITALS

WHEREAS, from January 26, 2005, through November 30, 2009, Office Depot and the City were parties to a contract for the purchase of office supplies ("the Contract");

WHEREAS, on or about December 18, 2009, the Office of the Controller for the City issued an audit report asserting that Office Depot had "overcharged [the City] at least \$5.75 million" in connection with the Contract;

WHEREAS, Office Depot disputed the audit report's findings and analysis and denied any overcharges; and

WHEREAS, the Settling Parties wish to fully, finally, and completely resolve the dispute that has arisen concerning the Contract;

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, the Settling Parties agree to settle their dispute regarding the above-referenced matters on the following terms:

1. The Settling Parties acknowledge that neither the execution of this Agreement nor compliance with the terms of this Agreement shall constitute an admission of wrongdoing or liability by Office Depot. Office Depot has denied and continues to deny any allegation that it overcharged the City in connection with the office supplies Contract. Furthermore, the Settling Parties agree that the making of this Agreement does not constitute an adjudication in favor of any party. The Settling Parties agree that this Agreement shall not constitute or be construed as evidence that any party has prevailed in this matter.

2. Within ten business days of the date of final approval of this Agreement by the San Francisco Board of Supervisors, Office Depot shall pay to the City the total sum of \$3,750,000.00 in the form of a check made payable to "San Francisco City Attorney's Office." This payment includes \$100,000 in payment of attorney's fees and \$250,000 in payment of the costs of the audit conducted by the Office of the Controller. Payment shall be delivered to the Office of the San Francisco City Attorney at 1390 Market St., 7th Floor, San Francisco, CA 94102, to the attention of Kristine Poplawski, Deputy City Attorney.

3. Within ten business days of the date of final approval of this Agreement by the San Francisco Board of Supervisors, Office Depot shall make available to the City a credit in the amount of \$500,000.00 (the "Purchasing Credit"). The Purchasing Credit may be drawn down on by the City for purchases from Office Depot's Business Solutions Division website, located at <https://business.officedepot.com>, made under a written contract with Office Depot, including but not limited to stand-alone agreements, cooperative purchasing agreements or other type of arrangement by which the City joins another purchasing contract or purchases through Purchase Order.

- a. The Purchasing Credit shall be applied to a new account created by Office Depot for use by the City (the "Purchasing Credit Account"). Office Depot will restrict the ability to place orders under this account to (1) the specific ship-to addresses that the City's Director of Purchasing authorizes in writing at the time the Purchasing Credit Account is established (the "Authorized Addresses"), and further restrict the ability to place orders under this account to (2) orders approved by those persons that the City's Director of Purchasing authorizes in writing at the time the Purchasing Credit Account is established (the "Authorized Approvers"). If the lists of Authorized Addresses and Authorized Approvers are not provided to Office Depot before the date of final approval of this Agreement by the San Francisco Board of Supervisors, Office Depot shall have ten business days after receipt of the lists to implement the restrictions on the Purchasing Credit Account. The lists of Authorized Addresses and Authorized Approvers can only be updated by the City's Director of Purchasing in writing, with Office Depot having ten business days after receipt of such written notice to implement the updated restrictions.
- b. The pricing for orders placed under the Purchasing Credit Account will be the pricing in effect at the time of order placement as set forth on Office Depot's Business Solutions Division website located at <https://business.officedepot.com>, unless (i) the City enters a written contract with Office Depot that provides for different pricing or (ii) the City participates in a purchasing cooperative or other arrangement that has a written contract with Office Depot that provides for different pricing.
- c. Office Depot shall provide the City with monthly usage reports showing all amounts charged under the Purchasing Credit Account for that month and the Authorized Address to which each purchase was shipped.
- d. The Purchasing Credit shall be valid for a period of five years after the Effective Date of this Agreement, after which any remaining balance shall become extinguished.

4. Within ten business days of the date of final approval of this Agreement by the San Francisco Board of Supervisors, the City shall pay to Office Depot the sum of \$48,915.40 as full and complete satisfaction of all outstanding balances owed by the City to Office Depot under the Contract.