

Item # 3-2E

**City of Carson City
Agenda Report**

Date Submitted: March 25, 2008

Agenda Date Requested: April 3, 2008

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to determine that Contract No. 078-140 is a contract for supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State and therefore not suitable for public bidding pursuant to NRS 332.115 and to approve Contract No. 0708-140 a request for the purchase of Office Supplies from OfficeMax through May 31, 2009 providing Carson City's approved funding and purchasing procedures are followed

Staff Summary: Contract No. 001260 by and between the County of Oakland, Michigan and OfficeMax Contract, Inc. for the supply and delivery of office supplies, paper, furniture, technology, janitorial supplies, and copy solutions allows for other governmental entities to purchase from the contract.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to determine that Contract No. 078-140 is a contract for supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State and therefore not suitable for public bidding pursuant to NRS 332.115 and to approve Contract No. 0708-140 a request for the purchase of Office Supplies from OfficeMax through May 31, 2009 providing Carson City's approved funding and purchasing procedures are followed

Explanation for Recommended Board Action: Through this contract, OfficeMax is offering free next-day delivery, 98% fill rate, desktop delivery, hassle-free returns with full credit within 30 days of purchase, and the following volume incentives:

If Carson City purchases up to \$500,000 in one calendar year, Carson City will receive a reimbursement equal to 0.5% of the sales volume.

If Carson City purchases over \$500,000 in one calendar year, Carson City will receive a

reimbursement equal to 1.0% of the sales volume.

If Carson City purchases over \$1,000,000 in one calendar year, Carson City will receive a reimbursement equal to 2.0% of the sales volume.

Pursuant to **NRS 332.115 subsection 1 (m) and NRS 332.195**, staff is requesting the Board of Supervisors declare that the contract is not adapted to award by competitive bidding and authorize all city departments to be able to place orders from this contract providing Carson City's approved funding and purchasing procedures are followed.

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency, response agency or other local governmental agency; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

- (a) Items which may only be contracted from a sole source;
- (b) Professional services;
- (c) Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;
- (d) Equipment which, by reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment;
- (e) Perishable goods;
- (f) Insurance;
- (g) Hardware and associated peripheral equipment and devices for computers;
- (h) Software for computers;
- (i) Books, library materials and subscriptions;
- (j) Motor vehicle fuel purchased by a local law enforcement agency for use in an undercover investigation;
- (k) Motor vehicle fuel for use in a vehicle operated by a local law enforcement agency or local fire department if such fuel is not available within the vehicle's assigned service area from a fueling station owned by the State of Nevada or a local government;
- (l) Purchases made with money in a store fund for prisoners in a jail or local detention facility for the provision and maintenance of a canteen for the prisoners;
- (m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State;
- (n) Items for resale through a retail outlet operated in this State by a local government or the State of Nevada;
- (o) Commercial advertising within a recreational facility operated by a county fair and recreation board;
- (p) Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of persons with disabilities; and
- (q) The design of, and equipment and services associated with, systems of communication,
are not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

2. The purchase of equipment for use by a local law enforcement agency in the course of an undercover investigation is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

- (a) The equipment is an electronic or mechanical device which by design is intended to monitor and document in a clandestine manner suspected criminal activity; or

(b) Purchasing the equipment pursuant to such requirements would limit or compromise the use of such equipment by an agency authorized to conduct such investigations.

3. The purchase of personal safety equipment for use by a response agency or any other local governmental agency is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

(a) The personal safety equipment will be used by personnel of the response agency or other local governmental agency in preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters in which the health, safety or welfare of those personnel may be compromised, impaired or otherwise threatened; and

(b) The cost of the personal safety equipment is comparable to the cost of similar personal safety equipment that is available for purchase by the public.

4. The governing body of a hospital required to comply with the provisions of this chapter, or its authorized representative, may purchase goods commonly used by the hospital, under a contract awarded pursuant to NRS 332.065, without additional competitive bidding even if at the time the contract was awarded:

(a) The vendor supplying such goods to the person awarded the contract was not identified as a supplier to be used by the person awarded the contract; or

(b) The vendor was identified as a supplier but was not identified as the supplier of such goods.

Ê The governing body of the hospital shall make available for public inspection each such contract and records related to those purchases.

5. This section does not prohibit a governing body or its authorized representative from advertising for or requesting bids.

6. As used in this section:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 239C.030.

(b) "Personal safety equipment" means safety equipment that personnel of a response agency or other local governmental agency:

(1) Use in the course of preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters; or

(2) Wear or otherwise carry on a regular basis.

Ê The term includes, without limitation, firearms, boots, bulletproof vests or other types of body armor, protective garments, protective eyewear, gloves, helmets, and any specialized apparatus, equipment or materials approved or recommended by the United States Department of Homeland Security.

(c) "Response agency" means an agency of a local government that provides services related to law enforcement, firefighting, emergency medical care or public safety.

(Added to NRS by 1975, 1538; A 1987, 296, 1484; 1991, 337, 349, 648, 1934, 1935; 1997, 132; 1999, 889, 1684; 2001, 1317; 2003, 620, 2262; 2005, 226, 2554)

NRS 332.195 Joinder or mutual use of contracts by governmental entities.

1. A governing body or its authorized representative and the State of Nevada may join or use the contracts of local governments located within or outside this State with the authorization of the contracting vendor. The originally contracting local government is not liable for the obligations of the governmental entity which joins or uses the contract.

2. A governing body or its authorized representative may join or use the contracts of the State of Nevada or another state with the authorization of the contracting vendor. The State of Nevada or other state is not liable for the obligations of the local government which joins or uses the contract.

(Added to NRS by 1975, 1539; A 1985, 357; 1999, 1686; 2001, 1320; 2003, 2263; 2005, 2556)

Applicable Statute, Code, Policy, Rule or Regulation: NRS 332.115 subsection 1 (m) and NRS 332.195

Fiscal Impact: Each department will budget their own purchases

Explanation of Impact: Each department will budget their own purchases

Funding Source: Each department will budget their own purchases

Supporting Material: Oakland County, Michigan Contract No. 001260

Prepared By: Cheryl Adams, Purchasing & Contracts Manager

Reviewed By:

(City Manager)

(District Attorney)

(Finance Director)

Date: 3/25/08

Date: 3-25-08

Date: 3-25-08

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay _____
2) _____

(Vote Recorded By)



L. BROOKS PATTERSON-COUNTY EXECUTIVE
OAKLAND COUNTY
PURCHASING DIVISION

OAKLAND COUNTY DEPARTMENT OF MANAGEMENT AND BUDGET

PURCHASING DIVISION

MASTER PURCHASING AGREEMENT

BY AND BETWEEN THE COUNTY OF OAKLAND

AND OFFICEMAX CONTRACT, INC.

Contract Number: 001260

Contract Expiration Date: May 31, 2009

Contract - NOT TO EXCEED AMOUNT: \$4,000,000.00

This "Contract" is made between the COUNTY OF OAKLAND, a Michigan Constitutional Corporation, hereinafter called "County", and the "Contractor" as further described in the following Table. In this Contract, either Contractor or the County may also be referred to individually as a "Party" or jointly as the "Parties".

COUNTY OF OAKLAND 1200 N. Telegraph Road Pontiac, MI 48341-0047 (herein, the "County")	OfficeMax Contract Inc. Products Corporation 13301 Stephens Road Warren, Michigan 48089 Vendor No. 000987 (herein the "Contractor")
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This Contract is organized and divided into the following "Section" or "Sections" for the convenience of the Parties:

SECTION 1. CONTRACT DOCUMENTS AND DEFINITIONS



L. BROOKS PATTERSON-COUNTY EXECUTIVE
OAKLAND COUNTY
PURCHASING DIVISION

SECTION 2. CONTRACT EFFECTIVE DATE AND TERMINATION

SECTION 3. SCOPE OF CONTRACTOR'S SERVICES

SECTION 4. COUNTY PAYMENT OBLIGATION FOR CONTRACTOR'S SERVICES

SECTION 5. CONTRACTOR ASSURANCES AND WARRANTIES

SECTION 6. CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION

SECTION 7. GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises, obligations, representations, and assurances in this Contract, the Parties agree to the following:

§1. CONTRACT DOCUMENTS AND DEFINITIONS

The following words and expressions when printed with the first letter capitalized as shown herein, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 1.1. “Contractor Employee” means without limitation, any employees, officers, directors, members, managers, trustees, volunteers, attorneys, and representatives of Contractor, and also includes any Contractor licensees, concessionaires, contractors, subcontractors, independent contractors, subsidiaries, joint ventures or partners, and/or any such persons, successors or predecessors, employees, and/or any and all persons acting by, through, under, or in concert with any of the above. “Contractor Employee” shall also include any person who was a Contractor Employee at anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.2. “Claims” means any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against the County, or for which the County may become legally and/or contractually obligated to pay or defend against, whether direct, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
- 1.3. “County” means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and “County Agent” as defined below.



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- 1.4. "County Agent" means all elected and appointed officials, directors, board members, council members, commissioners, employees, volunteers, representatives, and/or any such persons' successors (whether such person act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them. "County Agent" shall also include any person who was a "County Agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and serving as an Agent.
- 1.5. "Day" means any calendar day, which shall begin at 12:00:01 a.m. and end at 11:59:59 p.m.
- 1.6. "Contract Documents" This Contract includes and fully incorporates herein all of the following documents:
 - 1.6.1. Exhibit I: Standardized List of Contract Items
 - 1.6.2. Exhibit II: County Locations

§2. CONTRACT EFFECTIVE DATE AND TERMINATION

- 2.1. This Contract shall be effective when signed by an authorized individual representing each Party, and unless otherwise terminated or canceled as provided below, it shall end at 11:59:59 p.m. on the "Contract Expiration Date" shown on the first page of this Contract, at which time this Contract expires without any further act or notice of either Party being required. The Parties are under no obligation to renew or extend this Contract after Contract Expiration Date. Notwithstanding the above, under no circumstances shall this Contract be effective and binding and no payments to the Contractor shall be due or owing for any Contractor services until and unless:
 - 2.1.1. This Contract is signed by a Contractor Employee, legally authorized to bind the Contractor.
 - 2.1.2. Any and all Contractor Certificates of Insurance, and any other conditions precedent to the Contract have been submitted and accepted by the County.
 - 2.1.3. This Contract is signed by an authorized agent of the Oakland County Purchasing Division, as provided for on the signature page of this Contract, who shall be the final signatory to this Contract.
- 2.2. The County may terminate and/or cancel this Contract (or any part thereof) at any time during the term, any renewal, or any extension of this Contract, upon ninety (90) days written notice to the Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. Notwithstanding the above, if the County is being reimbursed for any cost or expenses incurred under this Contract by any third party, including any Federal, State or local governmental agency, and any such third party funding is terminated, the County may terminate, end or cancel this Contract immediately.



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upon written notice to the Contractor. The effective date for termination or cancellation shall be clearly stated in the written notice.

- 2.3. The County's sole obligation in the event of termination is for payment for actual services rendered by the Contractor before the effective date of termination. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages or any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination and/or cancellation of this Contract. The County shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein.
- 2.4. Contractor may terminate and/or cancel this Contract (or any part thereof) at any time for convenience upon ninety (90) days written notice to the County, and within thirty days (30) notice to the County if the County has failed or has not attempted to cure a breach under this Agreement. The effective date of termination and/or cancellation and the specific alleged default shall be clearly stated in the written notice. Notwithstanding Contractor's right to terminate under this section, in the event of termination, Contractor shall provide its best efforts and cooperation to ensure an orderly and efficient transition of the Services to another supplier.
- 2.5. The County may extend the term of this Agreement for up to an additional twelve month period only by written amendment. The County shall notify Contractor of any determination to extend this Agreement at least thirty (30) days prior to the beginning of this relevant option year.

§3. SCOPE OF CONTRACTOR'S SERVICES

- 3.1. The Contractor shall supply and deliver specified office supplies, stationary and other items selected from the list in Exhibit I (incorporated and made a part of this Agreement by reference) ("Products" and "Services") and/or a OfficeMax Contract Inc. Products Supply Catalogue, to designated Oakland County Facilities, for the prices set forth therein. Other catalogues may be offered during the term of the Contract at separately negotiated pricing between the Parties, including, but not limited to, the "S.O.S." catalogue. The OfficeMax Contract Inc. Products Supply Catalogue shall have a complete description of each item.
- 3.2. Contractor will be solely responsible for maintenance of the catalogs and will document all additions, deletion, manufacturers' discontinuance of products/equipment, and all associated variables including pricing revisions. Any changes, substitutions, additions, deletions and/or pricing revisions must be reviewed and approved by the COUNTY and Contractor in writing prior to any inclusion to the Oakland County Office Supply Catalogue list.
- 3.3. Periodically, at least annually, Contractor will prepare and distribute an Oakland County Office Supply Catalogue. This list will be revised semi-annually. The product catalogue

001260-00030460-21
OAKLAND COUNTY DEPARTMENT OF MANAGEMENT AND BUDGET-PURCHASING DIVISION-PROFESSIONAL SERVICES
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shall have a complete description of each item. Core item products and pricing will be reviewed and changed quarterly based on product cost changes and market conditions.

- 3.4. The following prices, payment terms, and incentives shall apply to this Contract.
 - 3.4.1. **Net Purchases** for purposes of this Section shall mean the aggregate purchase from Contractor of Products under this Contract, net of (i) returns/cancelled orders, (ii) applicable taxes, (iii) credits, and (iv) shipping/handling fees separately billed.
 - 3.4.2. **Non-Contract Product** prices shall be at a discounts up to 85%.
 - 3.4.3. **Payment Terms** shall be: 2%/10 net 20 for daily invoicing. Payment must be made via EFT to receive the incentive or discount
 - 3.4.4. If Oakland County spends less than \$50,000 per year Contractor will add a 5% markup over the "core item" pricing applied.
 - 3.4.5. **Volume Incentives** shall be provided, based upon total annual Net Purchases as follows:

<u>Annual Net Purchases</u>	<u>Incentive</u>
\$0 to \$500,000	.5%
\$500,001 to \$999,000	1%
\$1,000,000 +	2%
- 3.4.5. **Electronic Commerce Incentive** of 1% of total Net Purchase volume shall be provided if greater than 75% of Net Purchases are placed electronically.
Payment of any applicable incentives due pursuant to this Section 3.4 is contingent upon 90% of invoices being paid on time and within payment terms.
- 3.4.6. In consideration of the length of this contract and the benefits that OfficeMax will derive as a result, OfficeMax will pay the County a long term contract incentive. Within 30 days of contract signing, OfficeMax will pay \$83,334 to Oakland County. OfficeMax will pay the County \$83,334 by June 30, 2007. OfficeMax will pay the County \$83,334 by June 30, 2008. This provision is applicable only to Oakland County.
- 3.4.7. If Oakland County terminates this Agreement prior to the expiration date identified on the first page of this Agreement (Term) for any reason other than a material breach by OfficeMax, or OfficeMax terminates this Agreement due to a material breach by Customer, OfficeMax will have no obligation to pay any long term contract incentive that might otherwise become due pursuant to section 3.4.6.



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3.4.8. Incentives described in this Section 3: (i) are based on Oakland County executing this Agreement; (ii) are conditional on Oakland County paying all invoices according to the agreed upon terms; and (iii) will be calculated against total paid invoices, only on Net Sales, and only on Net Sales occurring while this Agreement is in full force and effect. Oakland County will be eligible for such incentives provided that Oakland County continuously maintains a current and in good standing account. All incentives are subject to and require that ninety percent (90%) of invoices are paid according to the terms of this Agreement. If ninety percent (90%) of invoices are not paid according to the terms and conditions outlined in this Agreement, no incentive shall be paid for the applicable measurement period and will not be paid retroactively. Should outstanding invoices exist, OfficeMax reserves the right to issue payment for incentives against outstanding invoices in lieu of paying the incentive directly to Oakland County.

3.5. Contractor shall highlight Contract Items on the Internet item list.

3.6. Contractor shall coordinate with County regarding internet order procedures and training.

3.7. Contractor shall accept and process Internet and authorized, approved fax orders from County locations as identified in Exhibit III. Purchases may also be made through issuance of a purchase order.

3.8. Contractor shall provide next-day order delivery to ordering locations identified in Exhibit III

3.9. Deliveries shall be made to each ordering location with a signature obtained on the manifest. Packlist shall be with merchandise. Contractor will retain manifest for support of the invoice inquiries

3.10. Contractor shall apply the appropriate, agreed-upon discount to purchases made under this Contract.

3.11. Contractor shall maintain inventory levels of items shown in Oakland County Office Supply and OfficeMax Contract Inc. Products Catalogues which will insure a 98.5% fill rate.

3.12. Contractor shall provide the following usage reports:

- Month and year-to-date sales for each authorized cost center;
- Monthly and year-to-date usage reports ranked in descending order for units and dollars for Contract Items and all items;
- Accounts payable with twice monthly summary invoice supported with listed invoices, in agreed-upon format, and credit memos;
- Accounts payable with twice monthly statement;
- Month and year-to-date items ordered by department code.



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3.13. Contractor shall handle order adjustments (returns, misfills, shortages, overages, etc.). The County will call OfficeMax Contract Inc. Products' Customer Service, and Customer Service will issue a return/credit authorization number ("ATR") to County. Any items returned pursuant to this section will be picked up on the next day's delivery. Contractor shall issue a credit memo with invoice by Ordering Division, purchase order number, and ATR number.

§4. COUNTY PAYMENT OBLIGATIONS FOR CONTRACTOR'S SERVICES

4.1. Except as otherwise expressly provided for in this Contract, the County's sole financial obligation to the Contractor under this Contract shall be:

4.1.1. Payment for the items ordered from Exhibit I and/or a OfficeMax Contract Inc. Products Supply Catalogue. In no event, shall the County's amount due and owing the Contractor for any and all goods and/or services rendered exceed the amount identified as the "NOT TO EXCEED AMOUNT" on the first page of this Contract. In the event the Contractor can reasonably foresee the total billings for its goods and/or services will exceed this "NOT TO EXCEED AMOUNT," the Contractor shall provide the County with notice of this contingency at least 15 Days before this event.

4.1.2. Every two weeks (twice per month), the Contractor shall submit an invoice to the County which shall itemize all amounts due and/or owing by the County under this Contract, as of the date of the invoice. The invoices shall be submitted in the form requested by the County. The County shall have no obligation to make payment until a proper invoice of service is submitted.

4.1.3. Price changes will be considered only on a calendar quarter basis during the contracting year. Discounts for electronic ordering, volume sales and electronic fund transfers are as set forth in Section 3.4.

4.1.4. Contractor shall advise the County in writing of any proposed price increases or manufacturer's discount structure changes, providing a copy of the proposed price list and/or acceptable evidence of change in manufacturers discount structure. Contractor will be responsible for furnishing and delivering approved price lists to all County departments and other Participating Agencies. It also shall be Contractor's responsibility to keep COUNTY and Participating Agencies informed of any other changes. Unless otherwise qualified, revisions shall be effective on the first business day of the next calendar quarter following such notification of price change. Upward revisions shall be subject to acceptance by COUNTY.

4.2. The County and Contractor have the right to offset any amounts due and owing to the other should that Party incur any costs associated with this Contract that are the obligations of the other Party under this Contract.



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- 4.3. This Contract does not authorize any in-kind services by either Party, unless expressly provided herein.

§5. CONTRACTOR'S ASSURANCES AND WARRANTIES

- 5.1. **Service Warranty.** Contractor warrants that all services performed hereunder will be performed in a manner that complies with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 5.2. **Business and Professional Licenses.** The Contractor will obtain and maintain at all times during the term of this Contract all applicable business and professional licenses necessary to provide the contracted services.
- 5.3. **Equipment and Supplies.** The Contractor is responsible for providing equipment and supplies not expressly required to be provided by the County herein.
- 5.4. **Taxes.** The Contractor shall pay its own local, state and federal taxes, including without limitation, social security taxes, and unemployment compensation taxes. The County shall not be liable to or required to reimburse the Contractor for any federal, state and local taxes or fees of any kind, provided an appropriate tax exemption certificate is furnished to Contractor.
- 5.5. **Contractor's Incidental Expenses.** Except as otherwise expressly provided in this Contract, the Contractor shall be solely responsible and liable for all costs and expenses incident to the performance of all services for the County including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.
- 5.6. **Contractor Employees.**
 - 5.6.1. Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to provide the services under this Contract. Contractor shall ensure all Contractor Employees have all the necessary knowledge, skill, and qualifications necessary to perform the required services and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
 - 5.6.2. Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employee.
 - 5.6.3. All Contractor Employees shall wear and display appropriate County-provided identification at all times while working on County premises.
 - 5.6.4. All Contractor Employees assigned to work under this Contract may, at the County's discretion, be subject to a security check and clearance by the County.



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5.6.5. The employees and agents of each Party, shall while on the premises of the other Party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

5.7. **Contractor Employee-Related Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance) and the Contractor warrants that all Contractor Employees shall fully comply with and adheres to all of the terms of this Contract. Contractor shall be solely and completely liable for any and all applicable Contractor Employee's federal, state, or local payment withholdings or contributions and/or any and all Contractor Employee related pension or welfare benefits plan contribution under federal or state law. Contractor shall indemnify and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between the Contractor and any Contractor Employee, including, but not limited to, Worker's Compensation, disability pay or other insurance of any kind.

5.8. **Full Knowledge of Service Expectations and Attendant Circumstances.** Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review the proposed services, and review all County requirements and/or expectations under this Contract. The Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform all obligations under the Contract as specified herein.

5.9. **The Contractor's Relationship To The County Is That Of An Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the County and either the Contractor or any Contractor Employee. All Contractor Employees assigned to provide services under this Contract by the Contractor shall, in all cases, be deemed employees of the Contractor and not employees, agents or sub-contractors of the County.

§6. CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION

Failure on the part of Contractor to obtain and maintain all required insurance coverage is a material breach upon which COUNTY may, in its sole discretion, suspend Contractor's performance or terminate this Agreement pursuant to applicable notice and cure provisions contained in this Contract.

6.1. Indemnification.

6.1.1. Contractor shall, to the extent of Contractor's negligence, indemnify, defend, and hold the County harmless from any and all Claims which are incurred by or asserted against the County by any person or entity, alleged to have been caused or found to arise, from the negligent acts, performances, errors, or omissions of Contractor or Contractor's Employees, including, without limitation, all Claims relating to injury or death of any person or damage to any property.

OAKLAND COUNTY DEPARTMENT OF MANAGEMENT AND BUDGET-PURCHASING DIVISION-PROFESSIONAL SERVICES
CONTRACT NUMBER 001260



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6.1.2. The indemnification rights contained in this Contract are in excess and over and above any valid and collectible insurance rights/policies. During the term of this Contract, if the validity or collectability of the Contractor's insurance is disputed by the insurance company, the Contractor shall indemnify the County for all claims asserted against the County and if the insurance company prevails, the Contractor shall indemnify the County for uncollectible accounts.

6.1.3. Contractor shall have no rights against the County for any indemnification (e.g., contractual, equitable, or by implication), contribution, subrogation, and/or any other right to be reimbursed by the County except as expressly provided by law.

6.2. Contractor waives and releases all actions, liabilities, loss and damage including any subrogated rights it may have against the County based upon any Claim brought against the County suffered by a Contractor Employee.

6.3. Under no circumstances shall either Party be responsible to the other Party for any indirect, special, incidental or consequential damages incurred or suffered in connection with Products and/or Services provided under this Contract.

6.4. Contractor Provided Insurance.

At all times during this Contract, Contractor shall obtain and maintain insurance according to the specifications indicated.

1. Contractor agrees to procure and maintain insurance coverage at its own expense during the term of this contract according to the following minimum specifications:

- a. Commercial General Liability with the following as minimum requirements:

\$3,000,000 – General Aggregate Limit other than Products/Completed Operations
\$3,000,000 – Products/Completed Operations Aggregate Limit
\$3,000,000 – Personal & Advertising Injury Limit
\$3,000,000 – Each Occurrence Limit
\$ 500,000 – Fire Damage Limit (Any One Fire)
\$ 10,000 – Medical Payments – Any One Person

Insurance policy shall contain the following coverage(s):

- Occurrence Form
- Broad Form Property Damage
- Premises/Operations
- Libel and Slander



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- Independent Contractors
- (Blanket) Broad Form contractual
- Personal Injury – Delete Contractual Exclusion “A”
- Per Location General Aggregate

The total limits of general liability coverage required herein may be satisfied with a combination of a Primary General Liability (and) Umbrella/Excess policy having not less than \$3,000,000 in limits, specifically listing the Primary General Liability policy as underlying insurance.

- b. Workers' Compensation: Coverage A, with limits statutorily required by any applicable Federal or State law (and) Employers Liability Insurance, Coverage B with minimum limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.
- c. Automobile Liability: with minimum limit of \$1,000,000 Combined Single Limit per occurrence (including No-Fault as required by law) for all hired, leased, owned and non-owned vehicles.
- d. Professional Liability (Errors & Omissions): with minimum limits of \$1,000,000 per occurrence and \$1,000,000 per aggregate.
- e. Crime/Surety Coverage: Insurance in an amount not less than \$1,000,000 covering against loss of money, securities, or other property referred to hereunder which may result from employee dishonest, forgery or alteration, theft, disappearance and destruction, computer fraud, burglary and robbery and made payable to the County of Oakland.
- f. Additional Insured: All policies of insurance, with the exception of Workers' Compensation, shall name the County of Oakland (as defined in this Contract) and County Agent (as defined in this Contract) as Additional Insured.

2. General Provisions:

- a. All Certificates of Insurance and policies of the contractor, any outside vendor or sub-contractor must maintain limits and coverages required by the Contractor and must meet and/or contain the following clauses and endorsements:



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1. The insurance company(s) issuing the policy or policies shall have no recourse against the County of Oakland for payment of any premiums or for assessments under any form of policy.
2. Any and all deductibles or self-insured retentions in the above described insurance policies shall be assumed by and be for the account of, and at sole risk of, the contractor.
3. All Certificates are to provide ninety (90) day written notice of material change, cancellation, or non-renewal. All Certificates of Insurance and Insurance Binders must be provided no less than ten (10) working days before commencement of work to the Oakland County Purchasing Division.
4. All Insurance carriers are subject to the approval of Oakland County and shall be licensed and approved to do business with the State of Michigan.
5. All policies shall be on a primary, non-contributory basis with any other insurance and/or self-insurance carried by the County.

§7. GENERAL TERMS AND CONDITIONS

- 7.1. **Access To County Facilities.** While the Contractor retains the right to perform services at any time, the Contractor must obtain prior permission by the County for access to County facilities after the County's regular business hours.
- 7.2. **Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 7.3. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination and/or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their very nature:
 - “**CONTRACTOR'S ASSURANCES AND WARRANTIES**”;
 - “**CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION**”;
 - “**Damage Clean Up To County Property and/or Premises**”;
 - “**Audit**”;
 - “**Severability**”;
 - “**Governing Law/Consent To Jurisdiction And Venue**”; and
 - “**Survival of Terms And Conditions**”.



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- 7.4. **County Right to Suspend Services.** Upon written notice, the County may suspend performance of this Contract if Contractor has failed to comply with Federal, State, or Local laws, or any requirements contained in this Contract. The right to suspend services is in addition to the County's right to terminate and/or cancel this Contract. The County shall incur no penalty, expense, or liability to Contractor if the County suspends services under this Section.
- 7.5. **No Third Party Beneficiaries.** Except as provided for the benefit of the Parties, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' rights in this Contract, and/or any other right, in favor of any other person or entity.
- 7.6. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.
- 7.7. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining throughout the term of this Contract all licenses, permits, certificates, and governmental authorizations necessary to perform all of its obligations under this Contract and to conduct business under this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate or governmental authorizations necessary to provide services under this Contract.
- 7.8. **Discrimination.** Contractor shall not discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin, or handicap in violation of State and Federal law.
- 7.9. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 7.10. **Force Majeure.** Notwithstanding any other term or provision of this Contract, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, any law, order, regulation, direction, action, or request of the United States government or of any other government, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor difficulties. Reasonable notice shall be given to the affected Party of any such event. The Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its obligations under this contract in the event of a reasonably anticipated, insurable business risk such as business interruption and/or any insurable casualty or loss.
- 7.11. **Conflict of Interest.** Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.321, et seq.), no contracts shall be entered into between the County, including all



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agencies and departments thereof, and any County Agent. To avoid any real or perceived conflict of interest, Contractor shall identify any Contractor Employee or relative of Contractor's Employees who are presently employed by the County. Contractor shall give the County notice if there are any County Agents or relatives of County Agents who are presently employed by Contractor.

- 7.12. **Damage Clean up to County Property and/or Premises.** Contractor shall be responsible for any unexpected and/or unnecessary damage to any County property, its premises, or a County Agent that is caused by Contractor or Contractor's Employees. If damage occurs, Contractor shall make necessary repairs and/or replacements to the damaged property to the satisfaction of the County. If the damage cannot be repaired to the County's satisfaction, Contractor shall reimburse the County the actual reasonable cost for repairing or replacing the damaged property. The Contractor shall be responsible for assuring that all County and municipal sites are restored to their original condition.
- 7.13. **Use of Confidential Information.** Neither Party shall reproduce, provide, disclose, or give access to Confidential Information to any third party, or to any Party employee not having a legitimate need to know any such information and data, and shall not use the Confidential Information for any purpose other than performing its services under this Contract. Notwithstanding the foregoing, either Party may disclose the Confidential Information if required by law, statute or other legal process; provided that the disclosing party agrees to (i) give the other Party prompt written notice of an impending disclosure, (ii) provide reasonable assistance to the other Party in opposing or limiting the disclosure, and (iii) make only such disclosure as is compelled or required. In the event of a Freedom of Information Act request, a reasonable effort shall be made to provide notification of such required disclosure of confidential information to the other Party, prior to disclosure.
 - 7.13.1. This Contract imposes no obligation upon Contractor with respect to any Confidential Information which Contractor can establish by legally sufficient evidence: (i) was in the possession of, or was known by Contractor, prior to its receipt from the County, without an obligation to maintain its confidentiality; or (ii) is obtained by Contractor from a third party having the right to disclose it, without an obligation to keep such information confidential.
 - 7.13.2. As used in this Contract, Confidential Information means all information that the County is required or permitted by law to keep confidential, and marked/identified by a legend indicating such information is "Confidential."
- 7.14. **Contractor Use of County Licensed Software.** In order for the Contractor to perform under this Contract, the County may permit Contractor or Contractor Employees to access certain copyrighted Software licensed to the County. Contractor or Contractor Employees shall not: transfer, remove, use, copy, or otherwise provide or make available any such copyrighted Software or Documentation to any other person or entity, for any



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purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither the Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any copyrighted Software. Neither the Contractor nor Contractor Employee shall use any copyrighted software contrary to the provisions of any applicable Software license agreement or state or federal law.

- 7.15. **Grant Compliance.** If any part of this Contract is supported or paid for with any state or federal funds granted to the County, the Contractor shall comply with all applicable grant requirements.
- 7.16. **Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Contract Administrators for possible resolution. The Contract Administrators may promptly meet and confer in an effort to resolve such dispute. If the dispute cannot be resolved in five (5) business days, the dispute may be submitted to the signatories of this Contract or their successors in office. The signatories of this Contract may meet promptly and confer in an effort to resolve such dispute.
- 7.17. **Access and Records.** Contractor will maintain accurate books and records in connection with the services provided under this Contract for 36 months after termination of this Contract, and provide the County with reasonable access to such book and records.
- 7.18. **Audit.** Contractor shall allow the County's Auditing Division, or an independent auditor hired by the County, to perform finance compliance audits with the authority to access all pertinent records and interview any Contractor Employee as customary, and upon reasonable advance notice to Contractor throughout the term of this Contract, and for a period of three years following the date of any final payment for Products and Services under the Contract. The cost of any audit shall be borne by the County. County shall make reasonable efforts to minimize business disruption to Contractor in performing any audit under this Contract.
 - 7.18.1. Contractor shall explain any audit finding, questionable costs, or other Contract compliance deficiencies to the County within forty-five (45) days of receiving the final audit report. Contractor's response shall include all necessary documents and information that refute the final audit report. Failure by Contractor to respond in writing within 45 days shall be deemed acceptance of the final audit report.
- 7.19. **Delegation/Subcontract/Assignment.** Contractor shall not delegate, assign, or subcontract any obligations or rights under this Contract without the prior written consent of the County.
 - 7.19.1. The rights and obligations under this Contract shall not be diminished in any manner by assignment, delegation or subcontract.



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- 7.19.2. Any assignment, delegation, or subcontract by Contractor and approved by the County, must include a requirement that the assignee, delegate, or subcontractor will comply with the rights and obligations contained in this Contract.
- 7.19.3. The Contractor shall remain primarily liable for all work performed by any subcontractors. Contractor shall remain liable to the County for any obligations under the Contract not completely performed by any Contractor delegate or subcontractor.
- 7.19.4. Should a Subcontractor fail to provide the established level of service and response, the Contractor shall contract with another agency for these services in a timely manner. Any additional costs associated with securing a competent subcontractor shall be the sole responsibility of the Contractor.
- 7.19.5. This Contract cannot be sold.
- 7.19.6. In the event that a Petition in Bankruptcy is filed and there is an assignment of this Contract by a Court, the County may declare this Contract null and void.
- 7.19.7. If any assumption, takeover, or unauthorized performance of Contractor's duties occurs without the County's prior written approval, this Agreement will become void for failure of its essential purpose. Such an act is a material breach of this Agreement, upon which the County may pursue any lawful remedy.
- 7.20. **Non Exclusive Contract.** No provision in this Contract limits, or is intended to limit, in any way the Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, this Contract is a non-exclusive agreement and the County may freely engage other persons to perform the same work that the Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee the Contractor or any Contractor Employee any number of fixed or certain number or quantity of hours or services to be rendered to or goods to be purchased by the County.
- 7.21. **No Implied Waiver.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any right or remedy under this Contract shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Contract. No waiver of any term, condition, or provision of this Contract, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.
- 7.22. **Severability.** If a court of competent jurisdiction finds a term, condition, or provision of this Contract to be illegal or invalid, then the term, condition, or provision shall be deemed severed from this Contract. All other terms, conditions, and provisions of this Contract shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.



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7.23. **Captions.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this contract. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this contract shall be deemed the appropriate plurality, gender or possession as the context requires.

7.24. **Notices.** Except for quarterly notices of price adjustments or catalogue changes, notices given under this Contract shall be in writing and shall either be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given when one of the following occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

7.24.1. If notice is sent to the Contractor, it shall be addressed to:

OfficeMax Contract Inc.
ATTN: Christopher Zott
Manager, Business Relations
13301 Stephens Road
Warren, Michigan 48089
Phone: 800/542-8787 ext. 7087

With a copy to:
OfficeMax Inc.
ATTN: General Counsel
150 E. Pierce Rd.
Itasca, IL 60143

7.24.2. If notice is sent to the County, it shall be addressed to:

Mr. Joseph Hylla, Manager
Oakland County Purchasing Division
1200 N. Telegraph Road
Pontiac, MI 48341

7.24.3. Either Party may change the address or individual to which notice is sent by notifying the other party in writing of the change.

7.25. **Contract Modifications or Amendments.** Any modifications, amendments, recessions, waivers, or releases to this Contract must be in writing and agreed to by both Parties. Unless otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by an expressly authorized Contractor Employee and by the same person who



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signed the Contract for the County or other County Agent as authorized by the Oakland County Board of Commissioners.

7.26. **Precedence of Documents.** In the event of a conflict between the terms and conditions in any of the documents comprising this Contract, the conflict shall be resolved as follows:

7.26.1. If any conflicting terms or conditions are set forth in any Exhibits, purchase orders, invoices, or other documents, the terms and conditions contained in this main Contract document shall prevail and take precedence.

7.27. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.

7.28. **Publicity.** Contractor shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided herein or required by law. However, in recognizing Contractor's need to identify its services and related clients Contractor may publicize its role under this Agreement, provided:

- Contractor shall develop all publicity material in a professional manner.
- During the term of this Contract, Contractor shall neither authorize another to, nor publish or disseminate any commercial advertisements, press release, feature articles, or other materials using the name of COUNTY without the prior written consent of County, which consent shall not be unreasonably withheld.
- Contractor may, without the prior written consent of COUNTY, indicate in its proposals and sales materials that it has been awarded this Agreement by Oakland County, provided that the requirements of this Paragraph 7.29 shall apply.

7.29. **Employment Eligibility Verification.** Contractor warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Master Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. Contractor shall indemnify, defend, and hold harmless COUNTY, its officers, participating government agencies and employees from and against any sanctions and any other liability which may be assessed against Contractor or COUNTY in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.



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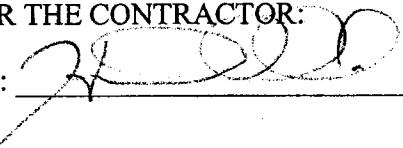
- 7.30. **"America Saves" Program.** The County has determined to permit Contractor use of the terms and conditions of this Contract to sell Products to other governmental entities (a "Participating Agency"). The terms of such arrangement between County and Contractor are set forth in a separate agreement. In no event shall County be considered a dealer, remarketer, agent or other representative of Contractor.
- 7.31. **Entire Contract.** This Contract represents the entire Contract and understanding between the Parties. This Contract supercedes all other prior oral or written understandings, communications, agreements or Contracts between the Parties, and specifically, shall supercede and replace the Oakland County Purchasing Contract identified as contract 001260, dated June 01, 2006 between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.



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The undersigned executes this Contract on behalf of Contractor and the County, and by doing so legally obligates and binds Contractor and the County to the terms and conditions of this Contract.

FOR THE CONTRACTOR:

BY: 

DATE: 5/30/06

_____ appeared in person before me this day and executed this Contract on behalf of Contractor and acknowledged to me under oath that _____ has taken all actions and secured any and all necessary approvals and authorizations and has the requisite authority from Contractor to fully and completely obligate and bind Contractor to the terms and conditions of this Contract and any and all other documents incorporated by reference and also acknowledged to me under oath having been provided with copies and having read and reviewed all Contract documents including all documents incorporated by reference.

Subscribed and sworn to before me on this _____ day of _____, 2006.

Notary Public

County, Michigan

My Commission Expires: _____

FOR THE COUNTY:

BY: 

Joseph Hylla, Manager,
Oakland County Purchasing Department

DATE: 05-25-06



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AGREEMENT GRANTING
OFFICEMAX CONTRACT, INC. PERMISSION TO USE OAKLAND COUNTY'S
MASTER PURCHASING AGREEMENT
IN ITS "AMERICA SAVES" PROGRAM

PURPOSE:

1. After a competitive bidding and selection process by Oakland County, OfficeMax Contract, Inc. ("Contractor") and the County (County) entered into a Master Purchasing Agreement, Contract Number 001260 (Master Agreement) which provides for the purchase of various office supplies and equipment (the "Products") from Contractor;
2. Contractor desires to extend the same terms, covenants and conditions available to County under the Master Agreement to other government agencies ("Participating Agency") which, in their discretion, desire to make purchases under the Master Agreement according to the terms and conditions stated therein;
3. Contractor desires to use the County as a reference and to identify it as a Party to the Master Agreement when Contractor extends the terms, covenants and conditions of the Master Agreement to Participating Agencies;
4. The County, recognizing the benefits and savings that extended purchasing programs can offer to Participating Agencies, and through them, to the taxpayer, desires to make the Master Agreement available to Participating Agencies to enable Participating Agencies to purchase Products on the same terms, covenants, conditions, and pricing as County, subject to any applicable laws, regulations and ordinances of the State of purchase;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the Parties agree as follows:

1. The County agrees to be identified and named as a Party to the Master Agreement that will be used in Contractor's extended purchasing program, known as "America Saves."
2. The County's role, duties and participation in "America Saves" shall be only as specifically set forth in this section. Contractor shall strictly limit its portrayal of the role of the County as set forth herein. Any representations by Contractor that the County's role exceeds the role described below shall automatically terminate this Agreement.
 - a) The County agrees to place a copy of its Master Agreement with Contractor on the County website.



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- b) The County agrees to place a copy of this Agreement granting Contractor permission to use the Master Agreement in its "America Saves" Program on the County website.
- c) The County agrees to place information regarding its competitive bidding procedures on the County website.
- d) The County agrees to include a statement that any other governmental entity which elects to purchase under the Agreement between the County and Contractor may do so without objection by the County.
- e) The County agrees to identify a County contact on its website. The identified County contact will respond to inquiries about the Agreement between Contractor and the County. The information will include an email address and telephone number. The identified County contact will be instructed to respond to inquiries within a reasonable time, not to exceed 10 business days.
- f) The County will provide information in the following categories in response to inquiries from other governmental entities:
 - i. The contract execution and expiration dates.
 - ii. The sums expended by the County under the contract.
 - iii. The County procedure for ordering under the contract.
 - iv. A summary of items purchased under the contract.
 - v. Contractor's procedure for delivering items to the County and County's procedures for accepting items.
 - vi. The County's procedure for returning defective or unsatisfactory items to Contractor.
 - vii. The benefits that will accrue to the County if the inquiring entity purchases under the County's Master Agreement.
 - viii. Citations to relevant Michigan statutes and court rules dealing with intergovernmental agreements, purchasing policies, jurisdiction and conflict of laws.

3. In every instance and circumstance in which the Contractor offers for sale or sells any Products to any Participating Agency by or through "America Saves" according to the terms and conditions of the Contract between itself and the Oakland County, it shall:

- a) Sell the various Products to the Participating Agency pursuant to the terms and conditions of the Master Agreement.
- b) Comply with the relevant laws, regulations and ordinances and respective procurement practices governing the Participating Agency's operation and purchase.
- c) Comply with the law and venue of the State in which such purchases are made in resolving any disputes between Participating Agency and Contractor which may arise out of use of the County's Master Agreement.
- d) Advise the Participating Agency that the Master Agreement is not exclusive and that purchases made under this Agreement are at the sole discretion of the Participating Agency.



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- e) Advise the Participating Agency that the County's permission allowing Contractor to use its Master Agreement for "America Saves" is not and should not be construed as an endorsement of any particular item or product available under the Master Agreement.
- f) Advise the Participating Agency that the County's permission allowing Contractor to use its Master Agreement for "America Saves" is not and should not be construed as a warranty that the prices available under the Master Agreement are the lowest prices available.
- g) Advise the Participating Agency that the County assumes no liability, of any sort whatsoever, for any damage, injury or harm of any kind that may arise from use of any Products that the Contractor offers for sale pursuant to the terms and conditions of the Master Agreement and the Participating Agency selects for purchase.
- h) As set forth in the Contract between OfficeMax and the County, OfficeMax will provide the Participating Agency with a **Volume Incentives**, based upon total net annual Net Purchases by Participating Agency:

Annual Net Purchases	Incentive
\$0 to 500,000	.5%
\$500,001 to \$999,999	1%
\$1,000,000 +	2%

- i) As defined in the Contract between OfficeMax and the County, "**Net Purchase**" for purposes of this Section 3 means the aggregate purchases from Contractor of Products under this Agreement, net of (i) returns/cancelled orders, (ii) applicable taxes, (iii) credits, and (iv) shipping/handling fees separately billed.
- j) As set forth in the Contract between OfficeMax and the County, OfficeMax will provide the Participating Agency with an **Electronic Commerce Incentive** of 1% of total Net Purchase volume. To qualify for the Electronic Commerce Incentive, greater than 75% of sales dollars must be processed electronically.
- k) As set forth in the Contract between OfficeMax and the County, OfficeMax will provide the Participating Agency prompt payment terms of 2% additional discount if payment is made within 10 days following receipt or net 30 based on daily billing. This must be paid via Electronic Fund Transfer (EFT). If EFT is not used, then the incentive or discount does not apply.
- l) In addition to the other terms and conditions related to purchases made pursuant to the Contract, OfficeMax will provide the Participating Agency a new account conversion allowance of 5% of the 1st 60 day's sales to new entities that join the "America Saves" program via OfficeMax.
- m) If the Participating Agency spends less than \$50,000 per year, a 5% markup over the "core item" pricing will be applied. This additional fee covers incremental start-up, ongoing management, and maintenance costs for accounts with lower volumes.
- n) Assume all responsibility for notifying potential Participating Agencies that the County's Master Purchase Agreement is available in its "America Saves" program.
- o) Deal directly with the Participating Agency regarding ordering, issuing purchase orders,



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delivery, invoicing, payment and contractual disputes.

- p) Agree to the addition of other acceptable terms and conditions, at the request of the Participating Agency, provided the additional terms and conditions do not conflict with the terms and conditions of the Master Agreement. If the Participating Agency and the Contractor are unable to agree to other terms and conditions requested by the Participating Agency, the Contractor is under no obligation to sell any good or service to the Participating Agency.
- q) Pay the County an administrative fee as described in Section 11 for performing the work involved to make the Master Agreement available and to permit its use by Participating Agencies.

4. All Contractor's printed and electronic promotional materials for "America Saves" shall carry disclaimers regarding 3(d), (e), (f) and (g) (above).
5. The County shall have no liability for any costs or damages if the Contractor and the Participating Agency dispute the terms and conditions of the Master Purchase Agreement and/or any additional terms or conditions between them and/or costs or damages incurred by a Participating Agency.
6. Contractor agrees to indemnify, defend, and hold County harmless in and from any dispute or claim, of any kind or type, including, by way of example and not limitation, any action contemplated or brought in any court, arising from or related to any solicitation, offer to sell, actual sale or dispute regarding any product, including any warranty disputes, product liability claims and any and all promotional or other activity related to "America Saves."
7. In no event shall the County be considered a dealer, remarketer, agent or other representative of Contractor.
8. This Agreement is effective on June 01, 2006, and shall expire at midnight, May 31, 2009, (the "Term"). This Agreement may be extended upon mutual agreement of the Parties provided the underlying Master Agreement has not expired by its own term or been terminated for any reason by action of either Party. Either Party may terminate this Agreement upon 30 days' prior written notice to the other Party for any reason including convenience. Termination of this Agreement shall not affect the Master Purchase Agreement between the County and Contractor.
9. This Agreement shall not interfere with the County's statutory and legal obligation to engage in a fair and impartial bidding process at regularly prescribed intervals. Nor shall any benefit that may be derived by the County as a result of this Agreement be deemed or considered to be an inducement or to create an incentive to circumvent the County's sealed bid process on behalf of Contractor. Selection of an alternate bidder shall automatically terminate this Agreement. Upon termination of this Agreement for any reason, including convenience, any and all provisions regarding the County's right to indemnification, subrogation, and



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limitations of liability shall survive such termination and continue in full force and effect.

10. In addition to any other incentives for which the County may be eligible, the County shall be entitled to an Administrative Fee on Quarterly total Net Purchases made by Participating Agency(s) as follows:

Quarterly Net Purchases	Administrative Fee
\$0 to \$500,000	1.5%
\$500,001 to \$1,000,000	1%
\$1,000,001 +	.5%

11. Payment of the administrative fee shall be made quarterly by Contractor to the County. Payment shall be accompanied by a written report identifying all purchases shipped and billed during the applicable quarter. Contractor shall have no claim or right to all or any portion of the Fee. Failure to submit fees and reports within 30 days of the end of a quarter shall be a material breach of this Agreement.

12. Reports and Fees shall be submitted to the County no later than thirty (30) days after the end of the applicable quarter. The Report shall contain sufficient information to permit the County to compare the administrative fee to the actual expenditures of the Participating Agencies based on actual payments to Contractor by the Participating Agencies.

13. The County will notify Contractor in writing of discrepancies between its sales and the County's administrative fee. Contractor shall have 30 days to correct such discrepancies, including correcting any under payment to the County. In addition to any audit rights set forth in the Master Agreement, the County may perform a financial and compliance audit of Contractor's records regarding sales using the County's Master Agreement in its "America Saves" Program. Any such audit shall be limited in scope to annual net purchases only, and shall not contain confidential information concerning the Participating Agencies.

14. Integration/Modification. This Agreement (including attachments hereto, if any) constitutes the entire agreement of the Parties relating to the use of the County's Master Purchase Agreement by Contractor in its sales to any other governmental entities. This Agreement supersedes any and all prior written and oral agreements or understandings concerning the use of the Master Purchase Agreement for sales to other governmental entities. This Agreement may only be modified by written amendment, signed by an authorized representative of each Party.

15. Governing Law. This Agreement shall be governed by and interpreted according the laws of the State of Michigan, without regard to its choice of law provisions. Any disputes between Participating Agency and Contractor which may arise out of the Agreement shall be resolved in accord with the law and venue of the State in which such purchases are made.



L. BROOKS PATTERSON-COUNTY EXECUTIVE
OAKLAND COUNTY
PURCHASING DIVISION

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year
first above written.

OfficeMax Contract, Inc.

A handwritten signature in black ink, appearing to read "H. COY." or a similar variation.

5/30/06

COUNTY

A handwritten signature in black ink, appearing to read "L. Brooks" or a similar variation.

05-25-06