

AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made and entered into by and between, the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”, and Office Depot, hereinafter referred to as “CONTRACTOR.”

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10385) for Countywide Print Shop and Copy Services, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR’S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP #10385 and in this AGREEMENT on the terms and conditions contained herein, in Contractor’s Proposal and in RFP #10385. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

All attachments, Exhibits and Appendix to this AGREEMENT
RFP #10385 Addendums #1, #2 and #3
RFP # 10385 dated Thursday, October 11, 2012, including all attachments and exhibits
CONTRACTOR’S Proposal dated Monday, November 20, 2012,
Certificate of Insurance
Additional Insured Endorsements

- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all Attachments, Exhibits and Appendix, CONTRACTOR’S

Proposal dated Monday, November 20, 2012, RFP #10385 Addendums #1, #2 and #3, RFP #10385 including all attachments and exhibits, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and to the best of Contractor's knowledge, are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 CONTRACTOR agrees to provide the COUNTY with but not limited to the following Printing and Copying Services in response to the County's Request for Proposal #10385:
- 2.2 **Printing and High Speed Copying Services:**

CONTRACTOR shall provide the COUNTY with a Web-based Print-on-Demand service that shall meet the print needs as well as time sensitive or confidential print orders from the COUNTY.

 - 2.2.1 COUNTY personnel shall be able to place orders online 24/7, from any computer with an internet connection and upload any files to the CONTRACTORS E-Commerce site at business.officedepot.com. COUNTY personnel will be directed to a click Copy & Print option and then will be able to print the requested documents. CONTRACTORS proposed Print-on-Demand solution shall require no additional initial setup cost, to the COUNTY to access the CONTRACTORS proposed digital options that include, but not limited to:
 - 2.2.1.1 Black & White, or full color printing; and

- 2.2.1.2 A variety of paper types and colors including, but not limited to; transparencies, linen, cardstock, certificate paper and more; and
- 2.2.1.3 A selection of document sizes- from letter size to large format; and
- 2.2.1.4 Multiple binding and finishing options

2.2.2 CONTRACTOR shall provide the COUNTY with a quick turnaround time, through its ten (10) Regional Print Facilities, offering premium, high-speed digital equipment and flexible, confidential shipping to all COUNTY locations.

2.2.3 CONTRACTOR shall offer the COUNTY the ability to have access to, if the COUNTY chooses to utilize integrated ordering, billing and usage reports, and utilizing existing account numbers. All Print-on-Demand orders shall have the ability to be consolidated or combined with existing office supply orders in one consolidated statement.

2.3 Save on Print and Storage:

CONTRACTOR shall provide the COUNTY with the ability to only print the document quantity needed at the time of request.

2.3.1 CONTRACTOR shall provide all services requested through this AGREEMENT through the utilization of Closed-Door Production Facilities to ensure confidentiality of COUNTY documents.

2.3.2 COUNTY shall have access to all CONTRACTORS retail locations within the United States, for same day service and at the AGREEMENT rate.

2.4 File Cabinet Online Digital Archiving:

COUNTY departments shall have the convenience of reordering documents by storing their previous print orders in a designated File Cabinet, an online digital storage service that shall be provided by the CONTRACTOR at no additional cost.

2.4.1 CONTRACTORS File Cabinet services shall allow COUNTY users to:

- 2.4.1.1 Upload, save and share documents online; and
- 2.4.1.2 Create access options, such as but not limited to exclusive use or share with others; and
- 2.4.1.3 Ability to update and modify documents quickly and easily; and
- 2.4.1.4 Work remotely- collaborating with others across multiple locations

2.5 Hard Copy Orders:

CONTRACTOR agrees to accept hard copy orders. These orders can be placed either via telephone call or email to an assigned CONTRACTOR support person. CONTRACTOR agrees to further identify this process during the initial training process to assure that all County departments are familiar with the process. CONTRACTOR agrees to provide additional training on a quarterly basis as needed or requested by the COUNTY for all new hires.

2.6 **Order Turn-Around Time Parameters:**

Based on the size and complexity of the order placed by the COUNTY through the web, CONTRACTOR agrees to provide at a minimum a one (1) to three (3) business day turn-around for orders. After receipt of the order, the COUNTY end user will be contacted by one of the CONTRACTORS Print Customer Service Teams (PCST) within thirty (30) minutes of the placement of the order via the web. The PCST shall go over the specifics of the order and estimated delivery times for the specific order.

2.6.1 For orders placed at one of the CONTRACTORS retail locations the same shall apply as above with the exception that in many cases the CONTRACTOR may perform the requested task and provide a same day turnaround time depending on the size and complexity of the job.

2.7 **Business Cards, Letterhead & Envelopes:**

CONTRACTOR agrees to provide the COUNTY with their Custom Stationery Online (CSO) integrated solution for acquiring COUNTY items such as business cards, letterhead, and envelopes.

2.7.1 CONTRACTORS' representatives shall work with COUNTY departments to coordinate a set of agency specific identity products tailored to each department's specific brand or specifications. COUNTY departments shall have the ability to order identity products, and have those products comingled and shipped the time as other basic office supply products.

2.7.2 CONTRACTORS system shall allow the user to create documents, with online instant pricing ordering, proofing and browser-based file uploading for but not limited to the following products:

- 2.7.2.1 Business cards
- 2.7.2.2 Letterhead
- 2.7.2.3 No. 10 envelopes
- 2.7.2.4 Monarch letterhead
- 2.7.2.5 Monarch envelopes
- 2.7.2.6 Catalog envelopes
- 2.7.2.7 Stamps
- 2.7.2.8 Name plates
- 2.7.2.9 Note cards
- 2.7.2.10 Mailing labels
- 2.7.2.11 Badges
- 2.7.2.12 Memo pads
- 2.7.2.13 Address labels
- 2.7.2.14 Presentation folders

2.8 **Offset Printing and Promotional Products Capabilities:**

CONTRACTOR agrees to provide the COUNTY with a wide-range of traditional offset printing options if the COUNTY desires the need.

2.9 **Production of Confidential Documents:**

CONTRACTOR understands the COUNTY'S need for production of confidential documents, and the necessity for a sometime quick response and turnaround time on some orders. CONTRACTORS print team shall work with each COUNTY department to determine the best solution for each department's specific needs. CONTRACTOR may and has the option of printing some orders locally at an Office Depot retail location, which may be closer to the COUNTY requesting department. Regardless of the chosen location the CONTRACTOR agrees to work with the COUNTY department in selecting the most appropriate and efficient location for producing the request print job or product.

2.10 **Account Billing Process:**

CONTRACTOR agrees to provide the COUNTY with the same level of account billing services as it does with its existing office supply accounts. CONTRACTOR further agrees that if it's the desire of the ordering party, CONTRACTOR agrees to provide hard copy invoices if requested. COUNTY users may also take advantage of the CONTRACTORS existing environmentally friendly electronic billing application.

2.11 **Training & Support:**

CONTRACTOR shall provide the COUNTY end-users with the necessary training in order to utilize the CONTRACTORS proposed Copy and Print Solution. CONTRACTOR shall deploy ample resources necessary to fulfill the contractual obligations of this AGREEMENT and to support the transition for all COUNTY personnel. There shall be no additional cost or responsibility incurred by the COUNTY for this required training and transition plan. CONTRACTOR shall be required to complete the implementation and training within approximately two (2) weeks from receiving the user information from the COUNTY.

2.11.1 CONTRACTOR shall offer a multi-level rollout plan based on the specific needs of each department and individual user. CONTRACTORS training may differ from department to department depending on the individual print users needs, and depending on whether or not the requesting user is already an approved user within the CONTRACTORS office supply web site. If requested CONTRACTOR shall be able to provide the COUNTY with customizable training resources to meet specific needs of individual departments.

2.11.2 CONTRACTOR agrees to provide the COUNTY with a variety of training options that may be deployed to assist COUNTY departments in the implementation and deployment of the new system. The CONTRACTORS options to be provided are at a minimum, but not limited to the following:

2.11.2.1 1-on-1 website training

2.11.2.2 Classroom training

2.11.2.3 Webcasts

2.11.2.4 Online Internet Assistance

2.11.2.5 CONTRACTORS Internet User's Guide (detailed instructions on placing orders)

2.11.3 CONTRACTOR agrees that at least one (1) training session is recommended for all COUNTY User Groups. During this training session CONTRACTOR shall review and explain to the users the account parameters and give a thorough overview of the functions of the website which shall be designed to direct the user to the approved core items as approved by the County Contracts/Purchasing Officer. CONTRACTOR further acknowledges that this training if so desired by the COUNTY can also be designed to be managed by specific approved groups, site administrators, designated approvers, and end users. CONTRACTOR and COUNTY both agree that it shall be the COUNTY'S choice and decision as to which method it prefers for the required training.

2.11.4 CONTRACTOR agrees that the training shall be comprised of hands-on training of the CONTRACTORS proposed website, which shall at a minimum, but not limited to including a review of the COUNTY'S account parameters, along with a Q&A session for questions that the users may have relating to the ordering process and/or account structure. CONTRACTOR agrees to provide the training session through, but not limited to the following options:

2.11.4.1 Webcast: CONTRACTORS associate shall facilitate the online training in a shared environment and conference call; and/or

2.11.4.2 Classroom Setting: CONTRACTORS associate may provide the training in a classroom environment as a presentation to a select number of participants selected by the COUNTY.

2.11.5 CONTRACTORS' end user training shall include at a minimum, but not limited to the following:

2.11.5.1 How to place orders; and

2.11.5.2 Who to call with problems or questions; and

2.11.5.3 Other pertinent items to be determined by both the CONTRACTOR and COUNTY

2.12 CONTRACTORS Fees:

CONTRACTORS' fees shall be individually quoted for each print request each time. All prices shall be in accordance with the CONTRACTORS current pricing structure, and shall be in accordance to industry standards and customary prices.

2.12.1 Fee Proposal:

All prices quoted by the CONTRACTOR shall include all forms, supplies, proofs, packaging, software, consumables, overhead, and any other related cost not specifically mentioned herein. All per copy prices shall include the cost of standard, 20 lb. bond, bright white paper (unless otherwise specified by the requestor at the time of placement of the order), and all labor and equipment necessary to produce the requested documents and copies required by the user.

2.13 **Service Performance Standards:**

CONTRACTOR acknowledges that it has or can acquire the necessary equipment or personnel necessary to fully comply with the terms and specifications of the RFP, AGREEMENT and all associated documentation that makes up the AGREEMENT.

2.14 **Response Times:**

CONTRACTOR agrees to approach each response time with “Green in Mind”. Print request turnaround times shall be determined and negotiated per each individual request between the requestor and the CONTRACTORS customer service team. CONTRACTORS average turnaround time for digital print requests is forty-eight (48) to seventy-two (72) hours. Shorter turnaround times may be available if the COUNTY user chooses or elects to use one of the CONTRACTORS approved retail stores which are open seven (7) days per week, with extended hours.

2.14.1 CONTRACTORS’ goal is to provide the COUNTY with a simple order process. Therefore, CONTRACTOR shall provide the COUNTY with the following method in which to place an order with the CONTRACTOR:

2.14.1.1 Click on the Office Depot link www.officedepot.com/bsd/copyandprint

2.14.2 CONTRACTORS’ web-based Print-on-Demand option is an innovative print order service that shall assist the COUNTY in meeting its everyday print needs as well as any potential time sensitive or confidential print requests.

2.14.3 COUNTY personnel shall have the ability to place orders online 24/7, from any computer with an Internet connection and upload any files to the CONTRACTORS E-commerce site at www.business.officedepot.com .

2.15 **Pick-up and Delivery Services:**

CONTRACTOR shall provide delivery services to all COUNTY users at no additional charge. Pick-up services if requested by a COUNTY user will require further negotiations’ between both the CONTRACTOR and the requesting party, and may be an additional charge to the requestor.

2.16 **Quality Acceptance:**

CONTRACTOR agrees to provide the COUNTY with the highest level of quality assurance through a team approach. CONTRACTOR agrees to develop a team approach, utilizing marketing vehicles such as face to face training, web based print interface, and consultation designed to assist with driving effective compliance with COUNTY’S AGREEMENT.

2.17 **Invoicing:**

CONTRACTOR agrees to provide the COUNTY with the same level of account and billing as they offer with our current existing supply account billing format.

2.18 Providing Proofs:

CONTRACTOR agrees and acknowledges that it possesses the ability to provide the COUNTY with both digital and hardcopy proofs. If the end user utilized the CONTRACTORS Online Print Center or File Cabinet functionalities it can request and receive digital proofs. If the end user utilizes the standard hard copy submission process then it can request a hard copy proof. CONTRACTOR and COUNTY both agree and acknowledge that digital proofs will be provided at no additional charge, but however, hardcopy proofs may require an additional cost which will be disclosed to the end user when submitting their print requests.

2.19 Environmentally Friendly Practices:

CONTRACTOR agrees to the extent possible that it agrees to comply with and meet the COUNTY'S approved Environmentally Friendly Practices as outlined within RFP#10385.

3.0 TERM OF AGREEMENT

3.1 The initial term shall commence with the signing of this AGREEMENT through and including April 1, 2016, with the option to extend this AGREEMENT for two (2) additional one (1) year periods, upon mutual written agreement by the parties.

3.1.1 County is not required to state a reason if it elects not to renew this AGREEMENT.

3.2 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT in order to be considered.

3.2.1 Both parties shall agree upon rate extension(s) or changes in writing.

3.3 Either party reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty day (30) written notice to the other party.

4.0 COMPENSATION AND PAYMENTS

4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto.

4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.

4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.

- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to each requesting department.
- 5.2 CONTRACTOR shall reference the RFP number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 STANDARD INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or

corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 **Qualifying Insurers:** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 **Commercial general liability insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.2 **Business automobile liability insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in

providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

7.4.2 Each liability policy shall provide that Contractor shall endeavor to provide notice in writing to the County at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof.

7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations

7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall endeavor to file

a new or amended certificate of insurance within thirty calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: No more than once per each 12 month period, County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of one year after termination or expiration of the AGREEMENT. Only documentation pertaining to

County that is non-proprietary or non-confidential will be provided. If a third party auditor is used, such auditor must be approved by Contractor, which approval shall not be unreasonably withheld. Additionally, the auditor must execute a non-disclosure and confidentiality agreement with Contractor, the form of which will be provided by Contractor. Should any audit reveal overcharge or undercharge, Contractor shall refund to County the amount of the overcharge, or County will refund to Contractor the amount of any undercharge. Contractor shall have the opportunity to dispute the results of any audit. Audits conducted by County, including audits conducted by a third party on behalf of County will be done at the expense of County.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of

work required to be performed by CONTRACTOR with his own organization or per a consortium.

- 10.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 10.4 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in this AGREEMENT. For purposes of this Agreement, the term “subcontractor” does not include those parties involved in Contractor’s day to day business operations, including but not limited to third party logistics vendors, delivery carriers and customer service providers.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with the COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing the COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to the COUNTY, as determined in the reasonable judgment of the Board of Supervisors of the COUNTY.
- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for the COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify the COUNTY by notices provided in accordance with Section 20.0 of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County’s Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances,

regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 ASSURANCE OF PERFORMANCE

If at any Time COUNTY believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written

assurances and written plan within ten (10) calendar days of its receipt of COUNTY'S request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT.

17.0 FORCE MAJEURE

"Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

18.0 NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.

19.0 WARRANTY BY CONTRACTOR

CONTRACTOR shall fully warrant all materials, equipment, and service against poor and inferior quality or workmanship for a period of not less than one (1) year from date of final acceptance by the COUNTY. Time is of the essence of this AGREEMENT. CONTRACTOR shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

20.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract

administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
Email: derm@co.monterey.ca.us

TO CONTRACTOR:

Office of the General Counsel
Office Depot
6600 Military Trail
Boca Raton, FL 33496

21.0 LEGAL DISPUTES

CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

By: _____
Signature of Chair, President, or
Vice-President

Dated:

Printed Name and Title

Approved as to Fiscal Provisions:

Dated:

Deputy Auditor/Controller

By: _____
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Dated:

Printed Name and Title

Approved as to Liability Provisions:

Risk Management

Dated:

Dated:

Approved as to Form:

Deputy County Counsel

Dated:

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

--END OF AGREEMENT--