



L. BROOKS PATTERSON-COUNTY EXECUTIVE
**OAKLAND COUNTY
PURCHASING DIVISION**

**AGREEMENT GRANTING
OFFICEMAX INCORPORATED PERMISSION TO USE COUNTY OF OAKLAND'S
PROFESSIONAL SERVICE CONTRACT NUMBER
IN ITS "AMERICA SAVES" PROGRAM**

PURPOSE:

1. After a competitive bidding and selection process by County of Oakland, OfficeMax Incorporated ("Contractor") and the County of Oakland ("County") entered into a Master Purchasing Agreement, Contract Number 003209 ("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. Contractor agrees to negotiate customized terms as necessary or required by market conditions to offer products and pricing specific to a Participating Agency or group of Agencies. The addition of such terms and conditions shall be mutually agreeable to Contractor and the Participating Agency. If the Participating Agency and the Contractor are unable to agree to other terms and conditions as requested by the Participating Agency, Contractor is under no obligation to sell any good or service to the Participating Agency.
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



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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.
 - 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 Master Agreement, it shall:
- a) Sell the various Products to the Participating Agency pursuant to the terms and conditions of the Master Agreement and such other mutually agreeable custom terms negotiated between Contractor and the Participating Agency.
 - b) Comply with the relevant laws, regulations and ordinances and respective procurement



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- 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 the Master Agreement are at the sole discretion of the Participating Agency.
 - 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) Assume all responsibility for notifying potential Participating Agencies that the County's Master Purchase Agreement is available in its "America Saves" program.
 - i) Deal directly with the Participating Agency regarding ordering, issuing purchase orders, delivery, invoicing, payment and contractual disputes.
 - j) 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.
 - k) Pay the County an administrative fee as described in Section 12 for performing the work involved to make the Master Agreement available and to permit its use by Participating Agencies.
4. As defined in the Master Agreement, "**Net Purchase**" for purposes of this Grant of Permission means the aggregate purchases from Contractor of Products by Participating Agency, net of (i) returns/cancelled orders, (ii) applicable taxes, (iii) credits, and (iv) shipping/handling fees separately billed. Participating Agencies shall be eligible for incentives relating to Net Purchases as further described in Exhibit II of the Master Agreement.
5. If the Participating Agency's projected spend is less than **\$75,000** per year with OfficeMax, 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.



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6. All Contractor's printed and electronic promotional materials for "America Saves" shall carry disclaimers regarding 3(d), (e), (f) and (g) (above).
7. 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.
8. Contractor agrees to indemnify, defend, and hold County harmless in and from any third party 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."
9. In no event shall the County be considered a dealer, remarketer, agent or other representative of Contractor.
10. This Agreement is effective on June 01, 2011, and shall expire at midnight, May 31, 2014, (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.
11. 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 limitations of liability shall survive such termination and continue in full force and effect.
12. 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
\$1,000,000 plus

Administrative Fee
.5%



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13. 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.
14. 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.
15. 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.
16. 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 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 Agreement for sales to other governmental entities. This Agreement may only be modified by written amendment, signed by an authorized representative of each Party.
17. 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.



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IN WITNESS WHEREOF, the Parties have executed this Agreement granting OfficeMax Incorporated permission to use County of Oakland's Professional Service Contract Number 003209 in its "America Saves" Program as of the day and year first above written.

OfficeMax Incorporated

Robert J. Givens

Date: 6/17/11

COUNTY

L. Brooks Patterson

Date: 06-20-2011