



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

CS09-049

1. Agenda Item Number:

20

2. Council Meeting Date:
September 11, 2008

TO: MAYOR & COUNCIL

3. Date Prepared: August 28, 2008

THROUGH: CITY MANAGER

4. Requesting Department: Community Services

5. SUBJECT: Award a two year Agreement No. CS8-998-2598 for Library Non-Print and Related Services to MidWest Tape, LLC and Chivers North America, Inc. dba BBC Audiobooks America in a combined amount not to exceed \$110,000.

6. RECOMMENDATION: Recommend awarding a two year Agreement No. CS8-998-2598 for Library Non-Print and Related Services to MidWest Tape, LLC and Chivers North America, Inc. dba BBC Audiobooks America in a combined amount not to exceed \$110,000.00.

7. HISTORICAL BACKGROUND/DISCUSSION: The Library contracts with book and media vendors to obtain the best discount for library materials. These agreements will enable the library to continue to receive the best prices for audio books, DVDs and music CDs. The items purchased from these vendors are discounted up to 25% and come preprocessed so that they can quickly be made available to our customers. The agreement is for two years with four one-year optional extensions.

8. EVALUATION PROCESS: The City issued a Request for Proposals (RFP) for vendors experienced in providing Library Non-Print and related Materials. Proposals were received from five vendors. The RFP was evaluated in accordance with established City policies and procedures. The evaluation committee included: Brenda Brown, Library Manager, Glenda Shackelford, Procurement Officer; Ginger Miloserny, Admin Librarian; Myron Mykyta, Librarian and Kristy Garcia, Purchasing Specialist. An agreement was negotiated with the two recommended vendors to provide the services described above.

9. FINANCIAL IMPLICATIONS: Funds for this request are allocated from General Fund Library Education Supplies 101.4310.0000.5320.

10. PROPOSED MOTION: Move to award a two year Agreement No. CS8-998-2598 for Library Non-Print and Related Services to MidWest Tape, LLC and Chivers North America, Inc. dba BBC Audiobooks America in a combined amount not to exceed \$110,000.

APPROVALS

11. Requesting Department

Brenda Brown

Brenda Brown, Library Manager

12. Department Head

Mark M. Eynatten

Mark M. Eynatten, Community Services Director

13. Procurement Officer

Glenda Shackelford

Glenda Shackelford, CPPB

14. City Manager

W. Mark Pentz

W. Mark Pentz

CITY OF CHANDLER GOODS/SERVICES AGREEMENT
LIBRARY NON-PRINT MATERIALS AND RELATED SERVICES
AGREEMENT NO.: CS8-998-2598

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Midwest Tape, LLC, a partnership, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Library Manager /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide Library non-print materials and related services all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
- 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.5. **Warranties.** Described in Attachment A

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the

CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the materials relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.

4. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed sixty thousand dollars (\$60,000) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference. However CONTRACTOR is aware that more than one CONTRACTOR has been awarded a contract for library materials non-print. CITY'S projected budget for such services during the term of this Agreement is \$30,000 (per year for the two year agreement) and CONTRACTOR agrees that CITY may choose to order services from one or more other CONTRACTORS.
- 4.1. **TAXES.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.3. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
- 4.4. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.5. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.6. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 4.7. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
5. **TERM:** The term of the Contract is two year (s), commencing on the 1st day of November, 2008 and terminating on October 31, 2010 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to four additional terms of one year each.
6. **USE OF THIS CONTRACT:**
 - 6.1. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

6.2. **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.

7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.

7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. **TERMINATION:**

8.1 **Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

8.2 **Termination for Cause:** City may, upon written notice, terminate this Agreement for CONTRACTOR's failure to comply with the terms of this Agreement.

8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in

initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

- 8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
- 10.1 **Notice:** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the end of the Contract nor lumped together with

other pending claims.

- 10.2 Forfeiture:** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of CITY'S position.
- 10.3. CITY Response:** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
- 10.4. Appeal:** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.5. Arbitration:** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
- A. Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
- B. Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential,

proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.

- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.

- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
- N. **Merger and Bar:** Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of Contract Time which reasonably should or could have been brought against any party that was or could have been brought into this ADR process. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error or omission.
- O. **Disputes of amounts greater than \$500,000:** Disputes for which the Arbitration Panel has determined to warrant an award in an amount greater than Five Hundred Thousand Dollars (\$500,000) to any one party, may be brought in the appropriate Court. A party must obtain such a determination from the Arbitration Panel prior to filing any legal action.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

Contract Administrator: Library Manager
Contact: Brenda Brown
Mailing Address: P.O. Box 4008 MS 601
Physical Address: 22 S. Delaware St.
City, State, Zip: Chandler, AZ 85244-4008
Phone: 480-782-2817
FAX: 480-782-2723

In the case of the CONTRACTOR

Firm Name: Midwest Tape, LLC
Contact: Jeff Jankowski
Address: 6950 Hall Street
City, State, Zip: Holland OH 43528
Phone: 800-875-2785
FAX: 800-444-6645

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

13. **CONFLICT OF INTEREST:**

- 13.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.
- 13.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 13.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

14. **GENERAL TERMS:**

- 14.1. **OWNERSHIP.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 14.2. **Entire Agreement.** This Agreement, including Exhibits A and B and attachment 1, attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

- 14.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 14.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 14.5. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
- 14.6. **Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 14.7. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 14.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of 2008.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: *[Handwritten Signature]*
Signature

ATTEST:

City Clerk

ATTEST: If Corporation
SEAL *Judith A Sumner*
Secretary

Approved as to form:

City Attorney *[Handwritten Signature]*



JUDITH A. SUMNER
Notary Public, State of Ohio
My Commission Expires 08-04-2010

EXHIBIT A
Scope of Work

Contractor shall provide library non-print materials and related services in conformance with the following specifications:

1. GENERAL SPECIFICATIONS

- 1.1. Contractor shall have the capability of providing multiple formats of nonprint materials for use in a public library setting. This includes but is not limited to DVDs, audio books on CD, multi-media kits, music compact discs, MP3s, "playaways", and video games.
- 1.2. Contractor shall provide various categories non-print materials as required. Contractor shall respond to only those materials and services capable of being supplied by Contractor.
- 1.3. The contractor should also have the ability to provide selection lists and other collection development services.

2. ORDERING AND INVENTORY SYSTEMS

- 2.1. Contractor shall provide easy-to-use online access to the ordering and inventory information systems for all materials at no additional cost to the City. The Library's maximum number of user IDS at no additional cost shall be fifteen (15).
- 2.2. Contractor's inventory and information system must provide the ability to order multiple copies for one/all branches by identifying a title only once (grid ordering).
- 2.3. Contractor's inventory and information system must provide access via the 13-digit ISBN (EAN) for both forthcoming and previously published titles.
- 2.4. Contractor shall confirm order within 24 hours after receipt. Confirmation shall minimally include title, ISBN/UBC and quantity.
- 2.5. Contractor shall assist in getting system operational and provide a minimum of four (4) hours of training on the system at no additional cost to the City, if requested.
- 2.6. Inventory shall be updated a minimum of once per week.
- 2.7. Contractor shall assist with the implementation of new releases and upgrades and provide a minimum of four (4) hours of training on the system at no additional cost to the City, if requested.
- 2.8. Items needing to be ordered by the contractor from their supplier shall not be delayed due to small quantities.
- 2.9. Contractor shall cancel orders 60 days after order date except for pre-pub titles.
- 2.10. Contractor performing outsourced work online will be offered Virtual Private Networking (VPN) access to staff *cataloging* functions of the online system.
- 2.11. If during the terms of this contract the library converts to a different online library system, the Library shall notify the contractor a minimum of ninety (90) calendar days before the conversion is implemented. The contractor shall respond in writing within fourteen (14) calendar days of receipt of notification indicating:
 - Whether or not it will continue to provide the services covered by this RFP at no additional cost.

- Shall inform the Library of any costs required for continuation of its services in accordance with the agreement, which costs shall be subject to negotiation, and shall justify those costs.
- Shall fully describe any services that it must terminate, modify or reduce in quality, timeliness, or other respects because of the conversion.
- Upon concurrence of the City and the Contractor regarding conversion costs, this concurrence shall be incorporated into an amendment to the Agreement.

3. CUSTOMER SUPPORT

- 3.1. Contractors shall provide a toll-free telephone number for customer service.
- 3.2. The contractor shall specify what reports they can produce and provide examples of the reports as part of its proposal. In the case of online reports, specific instructions should accompany the example of the report.

4. DELIVERY

- 4.1. Contractor's delivery of library non-print materials shall be in accordance with instructions given by the Library at the time of account setup.
- 4.2. Contractor's delivery times shall be:
 - 90% of all in-stock items ordered with cataloging and processing must be delivered within 15 calendar days from date of order receipt date.
 - In stock priority items must be delivered, cataloged and processed within five workdays from date of order receipt days.
 - Items back ordered by Contractor from its supplier must be delivered, cataloged and processed within 60 calendar days from date of order receipt date.
- 4.3. Contractor shall advise the Library in writing with each order of any title not in stock, no longer in publication or publication postponed.
- 4.4. All shipments shall be clearly marked as inside delivery. Contractor must ensure this is communicated to the shipping carrier prior to shipment of the goods.
- 4.5. Items shall be packaged separately according to branch, account number and invoice. Multiple purchase order numbers may be combined in one package as long as the items included are all for the same account number and branch.
- 4.6. A packing slip must be box specific and included in the box prior to shipping.
- 4.7. Items shall be listed on packing slips in title order and include: type of binding, 13 digit ISBN or UPC, price, discount, extended price and customer purchase order number.

5. INVOICES

- 5.1 Invoices shall list items supplied in alphabetical order by title.
- 5.2 List prices, percentage discount or monetary charge and net price of each item must be listed on the invoice.
- 5.3 Totals must be given that reference the account number and the purchase order number (where applicable).
- 5.4 Prompt payment information must appear on invoices.

5.5 Contractor shall supply all invoices in duplicate.

5.6 Contractor agrees that the invoice shall arrive within five (5) days after shipment of the materials. Payment terms shall be included with invoice.

6. FOB DESTINATION

6.1. Prices shall be Free On Board Destination, Freight prepaid, **INSIDE DELIVERY**.

7. TAXES

7.1. Libraries in the state of Arizona are exempt from sales tax on the purchase of materials for use by the public. Arizona Revised Statutes 42-5159.A.12.

8. ORDER STATUS REPORT

8.1. Contractor shall provide a status report with the first shipment of each order indicating the status of unfilled items. This information may be included on the invoice or the packing slip.

9. RETURNS

9.1. Items received in damaged condition shall be returned to the contractor provided the contractor issues a call tag. The Library prefers replacement of the item.

9.2. Contractor shall provide a copy of return policy and credit memo procedures as part of this agreement.

10. FILL RATE

10.1. Contractor's overall fill rate for all United States imprints and productions, for each year of the contract, must meet or exceed 85% of all items ordered. Failure to provide this percentage may result in contract default.

10.2. The Contractor will make every effort to maintain the following additional percentages:

- Contractor supplies through their in-stock inventory the delivery of 75% of each individual order in the first shipment. Line items that are reordered or back-ordered are not considered filled line items. Pre-publication titles are excluded from this calculation.
- Contractor supplies 60% of all items not delivered in the first shipment within 30 days from original order receipt date. Line items that are reordered or back-ordered are not considered filled line items. Pre-publication titles are excluded from this calculation.
- Contractor supplies 90% of all items not delivered in first shipment within 60 days from original order date. Line items that are reordered or back-ordered are not considered filled line items **and are then cancelled by the contractor**. Pre-publication titles are excluded from this calculation.

11. MULTIPLE ACCOUNTS

11.1. The Contractor shall have the capability of filling via separate branch, or other agencies, based on funding strings. An option to this is the capability of having a separate account for each branch cost center.

12. WARRANTY (Contractor shall provide the following)

- 12.1. The Contractor expressly warrants all items to be new, free from defects in materials and workmanship, and to be fit and sufficient for their intended purpose.
- 12.2. Unless otherwise specified, all items shall be guaranteed for a minimum of 120 days against defects in material and workmanship. Should a defect occur during this period the Contractor will replace the item free of charge.
- 12.3. The exception shall be where it is shown that the defect was caused by misuse and not fault of manufacturer or shipper.
- 12.4. Individual discs in multi-part video or audio sets that become damaged and/or defective in the first 12 months after receipt date shall be replaced free of charge to the Library.

**EXHIBIT B
PRICING**

1. PURCHASED MATERIALS

1.1 Music compact discs

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade * 25 %
Non-trade * 10 %

* Universal music is discounted 10%

1.2 Spoken word on compact disc, unabridged

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade 0 %
Non-trade %

Sold at retail in shelf-ready packaging

1.3 Spoken word on compact disc, abridged

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade 0 %
Non-trade %

Sold at retail in shelf-ready packaging

1.4 Single CD/DVD replacement disc

or %
\$

1.5 Playaways

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade %
Non-trade %

1.6 MP3s

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade %
Non-trade %

1.7 Microcomputer software

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade %
Non-trade %

1.8 DVDs

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade 25 %
Non-trade %

1.9 Electronic books

Percentage discount from publisher's price
Percentage discount from publisher's price

Trade %
Non-trade %

1.11 Kits (mixed media and multi part)

Percentage discount from publisher's price
 Percentage discount from publisher's price

Trade _____ %
 Non-trade _____ %

1.12 Video games

Percentage discount from publisher's price
 Percentage discount from publisher's price

Trade _____ %
 Non-trade _____ %

1.13 Lease plans

Provide literature that includes the kinds of materials you lease as well as plan descriptions and costs.

1.14 Standing order services

Provide literature that includes the kinds of materials you lease as well as plan descriptions and costs.

Various plans included

Vendor to provide discounts for the following:

VENDOR TO PROVIDE DISCOUNTS FOR THE FOLLOWING CD BOOKS:

Title	Author	ISBN	Discount
Diary of a Wimpy Kid	Kinney, Jeff	978-1-4281-8197-7	___ * 0 ___ %
Absolutely True Diary of a Part-Time Indian	Alexie, Sherman	978-1-4281-8297-4	___ * 0 ___ %
Duma Key	King, Stephen	0743569741	___ * 0 ___ %
Shadow Music	Shadow Music	0739357581	___ * 0 ___ %
Antony and Cleopatra	McCullough, Colleen	9780792752301	___ * 0 ___ %
Plum Lucky	Evanovich, Janet	9780792752264	___ * 0 ___ %
Blasphemy	Preston, Douglas	9780792752271	___ * 0 ___ %
The Book Thief	Zusak, Markus	978-0-7393-3800-1	___ * 0 ___ %
The Serpent's Tale	Franklin, Ariana	978-1-4159-4725-8	___ * 0 ___ %
Ramona The Brave	Cleary, Beverly	978-0-7393-5114-7	___ * 0 ___ %

* Midwest Tape sells retail edition audiobooks

VENDOR TO PROVIDE DISCOUNTS FOR THE FOLLOWING MUSIC CDS:

Title	Artist	UPC	Discount
Till the sun turns black	LaMontagne, Ray	828768332825	___ 25 ___ %
Stankonia	OutKast	730082607322	___ 25 ___ %
Parachutes	Coldplay	067003016223	___ 25 ___ %
A rush of blood to the head	Coldplay	00724354050428	___ 25 ___ %

Special forces	.38 Special	075021428027	<u> 10 </u> %
Love and theft	Dylan, Bob	696998597525	<u> 25 </u> %
Solid ground	Anderson, John	7863662322	<u> 25 </u> %
All the seasons of George Winston	Winston, George.	1934112662	<u> 25 </u> %
Suites 2 & 3 ; Flute concerto	Bach, Johann Sebastian	2894177152	<u> 10 </u> %
Cimento dell'armonia e dell'invenzione.	Vivaldi, Antonio,	2894192142	<u> 25 </u> %

VENDOR TO PROVIDE DISCOUNTS FOR THE FOLLOWING DVDS:

Title	Publisher	UPC	Discount
Inside the Living Body	National Geographic	727994752639	<u> 25 </u> %
Biography Carol Burnett	A & E	733961727883	<u> 25 </u> %
Drug Education for Teens: Alcohol & Alcoholism	Schlessinger Media	753201082138	<u> 25 </u> %
Austin Powers Goldmember	AOL Time Warner	794043607820	<u> 25 </u> %
Bleak House	Warner Home Video	794051233523	<u> 25 </u> %
Anthony Robbins: Financial Freedom	Midwest Tape	806807150036	<u> 25 </u> %
Cape Fear	Universal Home Video	0783235046	<u> 25 </u> %
Little Miss Sunshine	20th Century Fox Home	024543403319	<u> 25 </u> %
For the Love of a Dog	Rivercoast	9786311561812	<u> 25 </u> %
Denise Austin: Boot Camp Total Body Blast	Lions Gate	9786310603797	<u> 25 </u> %
Scholarships, Fellowships and Loans	Gale	1058-5699 1	<u> 25 </u> %
Statistical Abstract of the United States	Census Bureau	0081-4741	<u> 25 </u> %

2. PROCESSING SERVICES (Unit of service for pricing is each)

MEDIA

Replacement of original case:

CD book \$ included in total:
 White two-ring binder with pockets that preferably open from the top, 1 – 30 CDs, clear outer full-sleeve

Music CD \$ included in total
 Clear outer full-sleeve, polypropylene, tab to hold literature, push button hub

DVD \$ included in total
 clear outer full-sleeve on black case, vinyl, push release hub, single item literature well

Removing wrappings and security \$ included in total

Barcode, scannable \$.25

Barcode, eye-readable \$.25

Property label \$.40

3M security strip (D-1; no security on chip) with overlay
 Applied to each disc on DVDs and only first disc on audiobooks \$ 1.50

Call number label \$.25

7-day label	\$ <u>.25</u>
Label protector, when applicable	\$ <u>.25</u>
Radio frequency identification tag (RFID) library provides tag; application only	\$ <u>1.00</u>
Programming of RFID	\$ <u>1.00</u>
Cloth pockets for CDs, when applicable	\$ included in total
Fully processed and shelf-ready	<u>\$3.65 single disc</u> <u>\$3.90 double disc</u>

CATALOGING SERVICES (unit of service for pricing is "each")

CIP upgrades Or \$5.00 to \$6.00 depending on needs of library	\$ <u>1.20 unedited</u>
Generic MARC:	
Basic Dewey (DLC preferred)	\$ <u>4.00</u>
Local call numbers If Midwest can program in-house	\$ <u>1.20</u>
Editing of existing records based on a bibliographic utility (customized MARC) depending on needs of library	\$ <u>\$5.00 to \$6.00</u>
Uploading holdings to OCLC Included in customized	\$ <u>0</u>
Original cataloging <u>\$5.00 to \$6.00</u>	\$ <u>1.20 unedited or</u>
Fully shelf-ready cataloging <u>\$5.00 to \$6.00</u>	\$ <u>1.20 unedited or</u>

COLLECTION DEVELOPMENT SERVICES

Selection lists (forthcoming titles) – Standardized:

Bibliographic information with brief annotations	\$ _____
Bibliographic information with full-text reviews	\$ _____

Selection lists (forthcoming titles) – Customized:

Bibliographic information with brief annotations	\$ _____
Bibliographic information with full-text reviews	\$ _____

Special bibliographies – Standardized:

Bibliographic information with brief annotations	\$ _____
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Bibliographic information with full-text reviews \$ _____

Special bibliographies – Customized:

Bibliographic information with brief annotations \$ _____

Bibliographic information with full-text reviews \$ _____

2.6 DELIVERY

Contractor states that all items will be delivered 5-15 hot new releases calendar days after receipt of order.

2.7 PROCUREMENT CARD PAYMENT CAPABILITY (Please check appropriate box)

X Yes, I will accept payment under this contract with Procurement card.