



SHORT FORM COMMODITY PURCHASE CONTRACT



The parties to this Short Form Commodity Purchase Contract (Contract) do mutually agree and promise as follows:

1. **Parties.** The parties to this Contract are the CITY OF MILPITAS, CALIFORNIA, a municipal corporation (City) and the following named Contractor: **Fricke-Parks Press**

(Contact Name) **Dave Brown**
(Street Address) **33250 Transit Ave.**
(City/State/Zip Code) **Union City, CA 94587**
(Telephone) **510-489-6543**
(Email Address) **daveb@fricke-parks.com**
(Fax Number) **510-489-7124**
(Taxpayer ID #) **942175544**
(Milpitas Business License #)

2. **Term.** The effective date of this contract is **August 1, 2011** and it terminates **July 31, 2014** unless sooner terminated as provided herein. The term of this contract shall be for three years.

3. **Payment Limit.** City's total payments to Contractor under this contract shall not exceed: **\$12,281.89** annually

4. **Contractor's Obligations.**

(a) To the satisfaction of the City's Project Manager, Contractor shall provide the following: **See: IFB 2001 – Milpitas Activity Guide Printing.**

5. **City's Obligations.** City shall pay Contractor as follows: **Not-To-Exceed \$36,845.67** total payment for all commodities purchased.
(See: Attached IFB 2001.)

6. **Supplemental Conditions.** This Contract is subject to the Supplemental Conditions attached hereto, which are incorporated herein by reference.

7. **Signatures.** These signatures attest the parties' agreement hereto:

CONTRACTOR:

Name and Title

CITY OF MILPITAS, CALIFORNIA
a municipal corporation:

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Approved as to content:

By: _____
City Project Manager

Approved as to Insurance:

By: _____
City Risk Manager

Prepared by City Purchasing Agent

SUPPLEMENTAL CONDITIONS

1. INCORPORATION - That this contract includes and incorporates, as though fully set herein, the Notice Inviting Sealed Bids, Bid Form submitted by Contractor, General Conditions and Instructions to Bidders, Special Conditions, Specifications, Drawings, Addenda, if any, the Plans and Specifications and Drawings and such other writing as are incorporated in the foregoing, all as set forth in that document entitled Invitation For Bid for Milpitas Activity Guide Printing, Bid No. 2001 dated May 2, 2011.
2. CONTRACTOR PERFORMANCE - That the Contractor shall perform and be bound by all the terms and conditions of this contract and in strict conformity therewith shall perform and complete in a good workmanlike manner, the printing of the Milpitas Activity Guide **(3) three times yearly for a total of 19,000 individual issues** at the prices set forth in accordance with specifications provided by the City of Milpitas.
1. ACCEPTANCE - This contract becomes binding upon the terms and conditions set forth herein by acknowledgment or commencement of performance. Additional terms or changes proposed by the Seller do not become effective until accepted by the Buyer in writing. Oral agreements affecting the provisions of this Contract shall become binding only after mutual acceptance of a revision in writing to this Contract.
2. PRICE - The price for each item covered by any Purchase Order issued pursuant to this Contract shall be the price shown for such item on the Contract.
3. PAYMENT - Invoices will be paid according to discount terms stated on the "Discounts & Delivery Form" or if no discount is offered, within thirty days after receipt and acceptance of goods or completion and acceptance of services. Discount periods will be computed from either the date of delivery of goods ordered or the date of receipt of acceptable invoices, prepared in accordance with the terms of Buyer's order, whichever is later.
4. OVERSHIPMENTS - Overshipments necessary to adjust quantity ordered to nearest standard pack are acceptable provided such overshipments do not exceed 5% or \$25.00, whichever is smaller, of the line item involved.
5. PACKING, SHIPPING AND INSURANCE - No charges will be allowed for boxing, wrapping or cartage unless so specified in any Purchase Order issued pursuant to this Contract. Seller shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meet carrier's requirements and safeguard against damage from weather and transportation. Seller shall mark the number of any Purchase Order issued pursuant to this Contract on each container and enclose a packing slip with the order number in an envelope on each container.
6. TITLE AND RISK OF LOSS - Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by the Seller to the Buyer shall be F.O.B. Seller's address. Cost of all return shipments for whatever reason returned, shall be borne by the Seller with title and risk passing at the Seller's plant.
7. WARRANTIES - In addition to any warranty implied by fact or law, the Seller expressly warrants all items covered by any Purchase Order issued pursuant to this Contract to be free from defects in workmanship and materials, to conform strictly to applicable specifications, drawings and approved samples, if any, and to be fit for the purpose for which purchased. Such warranties, together with all other service warranties of the Seller, shall run in favor of the Buyer. All warranties shall survive inspection, acceptance and final payment by the Buyer.
8. SAMPLES. For evaluation purposes, samples may be requested from any Seller. Samples shall be provided at no charge unless Seller indicates on his quote the exact charge for samples. The City of Milpitas reserves the right to consume samples for testing purposes. The City of Milpitas may retain samples until delivery and acceptance of contracted items.
9. TESTING. After delivery, random samples may be tested by the City of Milpitas, submitted to a commercial laboratory, or other inspection agency, for testing to determine if they conform to the specifications. In cases where tests indicate the samples do not meet specifications, the cost of the testing if any, shall be borne by the seller. When tests indicate the materials do not meet specifications, the City of Milpitas reserves the right to cancel the award and purchase the goods in the open market. If testing is required it will be indicated in the specification or the line item description.
10. ASSIGNMENTS - Any Purchase Order issued pursuant to this Contract shall not be assigned in any manner by the Seller nor shall a subcontract be made with any other party for the furnishing of any of the completed or substantially completed articles, items, spare parts, work or services covered by this Contract without the Buyer's prior written consent.
11. TERMINATION - The performance of work or supply of material under any Purchase Order issued pursuant to this Contract may be terminated in whole or from time to time in part by the Buyer.
12. TAXES - All Federal, State or local taxes of any nature which are paid by the Seller and billed or passed on to the Buyer as part of the price for any Purchase Order issued pursuant to this contract shall be stated separately and clearly designated as such in the Seller's invoices.
13. LIENS - All items to be delivered hereunder shall be free and clear of any and all liens and encumbrances whatsoever.

14. COMPLIANCE WITH LAWS - The Seller shall in the performance of the Purchase Order issued pursuant to this Contract comply with all applicable Federal, State and local laws, government orders and regulations.
15. WAIVERS - The failure of the Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of any Purchase Order issued pursuant to this Contract, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of the Seller with respect to such future performance shall continue in full force and effect.
16. INDEMNIFICATION - If the Seller's agents, employees or subcontractors enter upon premises occupied by or under the control of the Buyer or any of its customers in the course of the performance of any Purchase Order issued pursuant to this Contract. The Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) to any person or any damage to any property arising out of any acts or omissions of the Seller's agents, employees, or subcontractors except to the extent that any such injury or damage is due solely and directly to the Buyer's negligence or other fault. The Seller shall indemnify and hold the Buyer harmless from and against any suits, liabilities, losses, damages, claims, causes of action and expenses (including attorneys fees) arising out of or connected with any act or omission of the Seller, its agents, employees or subcontractors.