SANTA FE COUNTY
PRICE AGREEMENT WITH MIDWAY OFFICE SUPPLY
FOR OFFICE SUPPLIES

THIS AGREEMENT is made and entered into this 15th day of October 2014, by and between **Santa Fe County**, hereinafter referred to as the "County" and **Midway Office Supply**, whose principal place of business is located at 5900 Midway Park Blvd. NE, Albuquerque, N.M. 87109, hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

A. **"County"** shall mean the County of Santa Fe, New Mexico.

B. **"Using Department or Department"** shall mean a Department of Santa Fe County

C. **"Purchase Order"** shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items and supplies to be provided by the Contractor.

D. **"Price Agreement"** means this indefinite quantity Price Agreement which requires the Contractor to provide office supplies to a Using Department which issues a Purchase Order.

E. **"Price"** means the fixed prices paid by the County and its Departments for office supplies as described in Attachment A.

2. GOODS TO BE PROVIDED

A. **Purchase.** Attachment A of this Price Agreement is the prices for the Contractor's office supplies and deliverables. Attachment A also indicates any specifications required for the items that are subject of this Price Agreement.

B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any item ordered by the County must be an item described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement #2015-0073-B-ASD/PL.

C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the items listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of items be issued under this Price Agreement. Quantities of items may vary and the Contractor is required to accept the Purchase Order and furnish the item(s).

D. **Specifications.** The items furnished under this Price Agreement shall meet or exceed the specifications provided in the Information for Bidders, IFB# 2015-0073-ASD/PL including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s) and price(s).

E. **Delivery and Billing Instructions.**

1. The Contractor shall deliver the items in accordance with the County's instructions. The Contractor shall also deliver, with the

items ordered, an invoice listing the order number and the Price Agreement number.

2. Whenever, the Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within five (5) business days that a deliverable is unacceptable by the Department.
4. Prices listed in Attachment A, for each item, shall be the fixed prices for the items.

3. PAYMENT. All payments under this Price Agreement are subject to the following provisions:

A. Inspection. Final inspection and acceptance of a deliverable shall be made by the Using Department.

B. Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items and deliverables meet specifications and will accept the items or deliverables if they meet specifications. No payment shall be made for any item until the item has been accepted in writing by the Using Department. Unless otherwise agreed upon, between the Department and the Contractor within five (5) business days from the delivery and receipt of items or deliverables, the Using Department shall issue a written certification of complete or partial acceptance or rejection of any item or deliverable. Unless the Using Department gives notice of partial acceptance or rejection within the time specified in Paragraph 2 above, the item or deliverables will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.

D. Payment. County shall pay Contractor on an invoice received from Contractor within thirty (30) days from the date the County approves the invoice.

E. Taxes. Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item on each invoice. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and county tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor written evidence of such exemption(s).

4. TERM OF THIS AGREEMENT. This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be one (1) year from the Effective Date. The County reserves the option to renew the Agreement for three (3) additional years for a total contract term of four (4) years.

5. CANCELLATION.

A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the items or deliverables fail to meet the requirements of this Price Agreement.

B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.

C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.

E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION.

A. For Convenience. Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the Termination date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.

B. For Cause. Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT. Except for amendment affecting price(s), this Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

8. ASSIGNMENT. Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

9. NON-COLLUSION. In signing this Price Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

10. RECORDS. During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS. The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

12. CONFLICT OF INTEREST. The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES. The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

14. SCOPE OF AGREEMENT, MERGER. This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

15. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

16. INDEMNIFICATION. The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY. This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

18. NEW MEXICO TORT CLAIMS ACT. No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees' at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

19. INSURANCE.

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.

C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW. This Price Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW.

A. This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

B. Contractor shall comply with the requirements of ***Santa Fe County Ordinance 2014-1 Establishing a Living Wage***.

22. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Price Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL. The Provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

25. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:

Santa Fe County
Attn: Katherine Miller
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:

Midway Office Supply
Attn: Michael D. Sei
5900 Midway Park Blvd. NE
Albuquerque, NM 87109

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Price Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Katherine Miller
Santa Fe County Manager

10-15-14
Date

APPROVED AS TO FORM

Gregory S. Shaffer
Santa Fe County Attorney

10/8/14
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Santa Fe County Finance Department

10/10/14
Date

CONTRACTOR

Signature

Date

Print Name

Print Title

FEDERAL TAX I.D. NUMBER: _____

SANTA FE COUNTY

Katherine Miller
Santa Fe County Manager

Date

APPROVED AS TO FORM

Gregory S. Shaffer
Santa Fe County Attorney

10/8/14
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Santa Fe County Finance Department

Date

CONTRACTOR

Signature

10-10-14
Date

Michael D. Sei
Print Name

President
Print Title

FEDERAL TAX I.D. NUMBER: 85-0208996

ATTACHMENT A

MIDWAY OFFICE SUPPLY

DISCOUNT OFF MANUFACTURER LIST PRICE
BY PRODUCT CATEGORY

	Discount
Office Supplies	28%
Copy Paper	35%
Technology Products	20%
Imaging Supplies	15%
Furniture Products	No Bid
Facility Maintenance	33%
Breakroom Supplies	25%

ATTACHMENT A

SPECIFICATIONS

The vendor shall provide its catalogue with a separate listing of each category from its catalogue that includes discount rate for those categories. The vendor shall also provide to the Purchasing Division its complete list of office supplies in order to verify discount prices for all office supplies ordered from County departments.

If there are larger items from the catalogue such as office furniture, office equipment, business electronics that do not include a discount, those items must also be listed with the notation "no discount" included on the price list.

Prices shall remain firm and fixed for the initial one-year term of the contract. The vendor shall state how rate increases will be determined at each renewal period (ie. a fixed percent, tied to a specific economic factor, no price increase proposed, etc.).

Office supplies to be purchased include pencils, pens, erasers, markers, highlighters, tape, paper clips, writing pads, file folders, hanging file folders, files, binders, binder clips, notebooks, envelopes, printer supplies, copy paper, sticky notes, tape, tape dispensers, stamps, index cards, calendars, wall planners, toners, batteries, scissors, staplers, mouse pads, push pins, address labels, file folder labels, dry erase boards, dry erase cleaners, etc.

Office supplies will be billed at the discount offered in the catalogue price list. Cost for office supplies will be itemized separately on each invoice and will indicate list price less discount offered.

Under the terms and conditions of the Price Agreement all Santa Fe County departments may issue orders for items described on the catalogue price list. The terms and conditions of the Price Agreement shall form a part of each order issued. All orders issued will bear both an order number and the Price Agreement number.

Vendor shall furnish the County with copies of the price list(s) and catalogues at no additional cost.

Vendor shall provide on-line access to County for the placement of orders.

Prices quoted represent the total compensation to be paid by the County for office supplies provided. The vendor providing said supplies to the County is responsible for payment of all costs of labor, equipment, tools, materials, federal tax, permits, licenses, fees and any other items necessary to provide the office supplies. The prices quoted will include the amount sufficient to cover such costs.

It is understood that no guarantee or warranty is made or implied by either the Santa Fe County Purchasing Division or County departments that any order for any definite quantity will be

issued under the Price Agreement. The vendor is required to accept the order and furnish the items in accordance with the articles contained hereunder for the quantity of each order issued. Santa Fe County reserves the right to make purchases from other vendors should it be on an emergency basis or should there be a substantial price difference favorable to Santa Fe County.

Warranty

Vendor shall warrant that all materials utilized in the performance of the Price Agreement shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free of from all defects in material, workmanship and title.

All supplies shall carry the manufacturer's standard warranty. All other standard business practices shall be extended to the County.

Shipping and Billing Instructions

Vendor shall ship in accordance with the instructions of on the purchase order. Shipment shall be made only against specific orders which the procuring department may place with the vendor during the term of the Price Agreement. The vendor shall enclose a packing list with each shipment listing the order number, price agreement number and the part number for each item.

The vendor shall ship all products F.O.B. destination. Except for loss or damage directly attributable to the negligence of a procuring department, the vendor shall bear all risk of loss or damage until products have been accepted by the procuring department. Destination charges are included in the product price on the price sheet. The vendor may impose shipping and handling charges for enhanced delivery services (overnight courier service, second-day courier service or delivery-by-messenger service). Such enhanced delivery charges shall be pre-paid by the vendor and billed as separate item at actual cost. The vendor shall advise the procuring department of any enhanced delivery charges prior to the acceptance of the purchase order.

Whenever a procuring department does not accept any product and returns it to the vendor, all related documentation furnished by the vendor shall be returned also. The department will inform the Vendor within five business days that a deliverable is unacceptable by the department.

The vendor shall bear all risk of loss or damage with respect to the returned products except for loss or damage directly attributable to the negligence of the department.

Unless otherwise agreed upon by the department, the vendor is responsible for the pick-up of the returned items.

Packing

The County's purchase order number and the vendor's name, department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other

correspondence in connection with the shipments. The department's count will be accepted by the vendor as final and conclusive on all shipment not accompanied by a packing ticket.

Inventory

Vendor must have the experience, qualifications, stock and facilities to handle this type of contract. Inventory must include a substantial stock of office supplies likely to be purchased by Santa Fe County.