

Master Purchase Order

DO NOT INVOICE TO THIS ADDRESS		Master Purchase Order No. 5595N0116	
City & County of Denver		Date: December 23, 2015	Revision No.
Purchasing Division		Payment Terms: Net 30	Ordinance (as applicable):
201 West Colfax Avenue, Dept. 304		Freight Terms: DESTINATION	
Denver, CO 80202		Ship Via: Vendor	
United States		Buyer: Joe Saporito	
Phone: 720-913-8100 Fax: 720-913-8101		Phone: 720-913-8118	

PS Vendor ID - Staples: 0000040185 Phone: 877-826-7755
 PS Vendor ID - Faison: 0000000922 Phone: 303-775-1170

Primary Contract Vendor:
 Staples Contract & Commercial, Inc.
 operating as: Staples Advantage
 500 Staples Drive
 Framingham, MA. 01702

Ship To: Various City Agencies located throughout the Denver Metro Area

Bill To: Accounts Payable
 201 West Colfax Department 908
 Denver, Colorado 80202
 or
 As Specified By Agency

MBE Partner:
 Faison Office Products
 3251 Revere Street, Suite 200
 Aurora, CO. 80011

1. Goods/Services:

Staples Contract & Commercial, Inc. operating as Staples Advantage, a Delaware Corporation (Primary Contract Vendor) and Faison Office Products, Inc., a Colorado corporation (MBE Partner) shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order. It is the intent of the parties that approximately 30% of net sales will be purchased directly through the MBE Partner and the remaining sales will be purchased directly through the Primary Contract Vendor. The Primary Contract Vendor and the MBE Partner are each individually referred to herein as the "Vendor" with respect to the rights and obligations associated with their respected sales.

2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Agreement for purposes of such Order only.

3. Pricing:

The pricing/rates for the goods/services is contained on **Exhibit A** and shall be held firm for the term of this Master Purchase Order.

4. Extension or Renewal:

The effective period of this Master Purchase Order shall be from January 1, 2016 to and July 31, 2019. It is also a specific provision of this Master Purchase Order that the City and the vendor may mutually agree to renew and continue the contract or agreement consummated under this Master Purchase Order for additional periods of one year at the same prices, terms and conditions. However, no more than one (1) yearly extensions shall be made to the original Master Purchase Order.

5. Inspection and Acceptance:

City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

6. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all

notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

7. Risk of Loss:

Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.

8. Invoice:

Each invoice shall include: (i) the Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

9. Payment:

Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq. after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of Fifteen Million Dollars (\$15,000,000). The Vendor acknowledges that any goods/services provided beyond those specifically described in Exhibit A are performed at Contractor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

10. Amendments/Changes:

Only the Manager of General Services or his delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.

11. Warranty:

Vendor warrants and guarantees to City that all goods furnished under this Master Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Master Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

12. Indemnification/Limitation of Liability:

Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.

13. Termination:

Either party may terminate this Master Purchase Order, in whole or in part, at any time and for any reason upon a 30 calendar day prior written notice to the other party. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

14. Interference:

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

15. Venue, Choice of Law and Disputes:

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

16. Assignment/No Third Party Beneficiary:

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

17. Notice:

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

18. Compliance With Laws:

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

19. Insurance:

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Master Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Master Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Risk Management reserves the right to require additional policies and/or limits based on agreement scope of work. Vendor shall provide a copy of this Master Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Master Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Master Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Master Purchase Order. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Master Purchase Order shall not act as a waiver of Vendor's breach of this Master Purchase Order or any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Master Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Master Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-hired vehicles used in performing services under this Master Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Master Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

20. Severability:

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

21. Survival:

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

22. No Construction Against Drafting Party:

No provision of this Master Purchase Order shall be construed against the drafter.

23. Status of Vendor/Ownership of Work Product:

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

24. Records and Audits:

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

25. Remedies/Waiver:

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

26. No Discrimination in Employment:

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

27. Use, Possession or Sale of Alcohol or Drugs:

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

28. Conflict of Interest:

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

29. Advertising and Public Disclosure:

The Vendor shall not include any reference to the Master Purchase Order or to services performed or goods purchased pursuant to the Master Purchase Order in any of the Vendor's advertising or public relations materials without first obtaining the written approval of the Director of Purchasing.

30. No Employment of Illegal Aliens to Perform Work Under The Agreement:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

This Master Purchase Order is acknowledged and agreed to by:

City & County of Denver, Purchasing Division

Primary

Vendor Name: Staples Advantage
(Company Name)

By: S. K. Facer
(Authorized Signature)

Print Name: S. K. Facer

Title: VP Sales

Date: Dec 30, 2015

By: *[Signature]*
(Authorized Signature)
for Joe Saporito

Print Name: Joe Saporito

Title: Senior Buyer

Date: 1/21/16

MBE

Partnering Vendor Name: Faison Office Products, Inc
(Company Name)

By: *[Signature]*
(Authorized Signature)

Print Name: Jared D. Casey

Title: President / CEO

Date: January 21, 2016

EXHIBIT "A"

Primary Contract Vendor: Staples Contract & Commercial, Inc.
MBE Partner: Faison Office Products, Inc.
Title: Office Supplies
Master Purchase Order No.: 5595N0116

It is recommended that you use your Master Purchase Order No. – 5595N0116, in all future correspondence, billing, invoicing or other communications.

Description of the goods, and services related thereto, being purchased and pricing:

**MASTER PURCHASE ORDER ("MPO") BETWEEN
THE CITY AND COUNTY OF DENVER
AND
STAPLES CONTRACT & COMMERCIAL, INC.
AND
FAISON OFFICE PRODUCTS, INC. ("FAISON")
FOR
OFFICE SUPPLIES**

All purchases for office supplies under this MPO are made pursuant to DRMC 20-64.5. Proposal Items and related discounts per the National Joint Powers Alliance (NJPA) contract no. 010615

NJPA PROGRAM AGREEMENT

This NJPA Program Agreement ("MPO Agreement") by and between City and County of Denver ("the City") and Staples Contract & Commercial, Inc., operating as Staples Advantage ("Staples") is made effective as of Date of City signature (the Program Agreement Effective Date") and is attached to and governed by the NJPA Agreement(s) specifically marked and identified in Section 3.2 below ("NJPA Agreement(s)") between Staples and NJPA. The City and Staples are collectively referred to herein as the "Parties". All capitalized terms used herein shall have the meaning assigned to them in the NJPA Agreement unless otherwise defined herein.

WHEREAS, the City, a member of NJPA (as defined below), and Staples desire to enter into this MPO Agreement pursuant to which the City may participate in the NJPA Program to purchase Products (as defined below).

NOW, THEREFORE, in consideration of the foregoing mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 **Previous Program Agreement(s)**. The Parties acknowledge and agree that this MPO Agreement shall replace and supersede any previous MPO Agreement including any amendments attached thereto as of the Program Agreement Effective Date set forth in paragraph 1 above.

2.0 **Definitions**.

2.1 **NJPA**. The National Joint Powers Alliance® (NJPA) is a public agency serving as a national government/education contracting agency. NJPA was created and organized under the "Service Cooperative" section of the Minnesota Statute, M.S. 123A.21. NJPA is governed by publicly elected

officials while cooperatively serving all municipal and educational agencies nationally under the authority of the Minnesota Joint Exercise of Powers laws M.S. 471.59.

2.2 **Products.** All items included in the NJPA Program that Buyer purchases or may purchase from Staples.

3.0 **City Representations and Warranties.** The City hereby represents and warrants that:

- 3.1 it is a governmental entity as defined in Minnesota Statute 471.59 or it is a nonpublic school administrative unit eligible to participate in the NJPA Program pursuant to Minnesota Statute 123a.21;
- 3.2 it is an NJPA member and will maintain its NJPA membership during the Program Agreement Term;
- 3.3 it has the local legal ability to recognize and participate in joint exercise of powers activities under the applicable state and federal procurement laws; and
- 3.4 as a member of NJPA, the City may participate in the NJPA Program, provided, however, the City acknowledges that it (i) will be bound in all respects by the terms and conditions of the NJPA Agreement and terms and conditions of this MPO Agreement

4.0 **Prices.** Prices for Products are available at the time of purchase on www.StaplesAdvantage.com and/or <https://Faison.ediversitynetwork.com> or as otherwise provided by the NJPA Program.

NJPA Pricing Structure is as follows:

4.1 **Hot List**

- Net Priced: Approximately 1,800 items. These items will be based on quarterly reviews of the City's usage and the intent is to maximize savings on the City's high use items. Staples will work with the City to determine the appropriate items to be included in the Hot List.
- Primarily paper, petroleum-based and other industry-related products with potentially volatile pricing due to product content and/or manufacturing processes
- Staples may request a price change adjustment for Hot List Pricing items by submitting to NJPA, no more than once a calendar quarter, a request for price adjustment(s). Although pricing/product change does not have to take effect on the start of the calendar quarter.
- Price changes require NJPA approval.

4.2 **Core List**

- Net Priced: Approximately 20,000 items. Primarily In-stock Office, Classroom, Technology and Facilities Supplies.
- Prices fixed for a year (January 1 – December 31).
- Staples can submit a request for price changes annually, 30 days prior to December 31.
- Requires NJPA approval. If approved, January 1 is the effective date of any changes.

4.3 **Non-Core Items**

- Non-Core Items are those items that are not on the Hot List or Core List, and available on Staplesadvantage.com. For those Non-Core Items that appear on Staples.com, such Non-Core Items will be priced based on the current national Staples.com price for such items, which Supplier will update on a weekly basis, provided that such pricing is exclusive of tier pricing, closeouts, promotions and/or specials.
- The prices for Non-Core Items that are not available for purchase on Staples.com shall appear on Staplesadvantage.com, and shall be adjusted to reflect changes in stock availability, market conditions, buying expense, and other factors that affect the overall cost of the Non-Contract Items. Notwithstanding anything to the contrary, Non-Core Items are not subject to customer audit or any pricing guarantee.

4.4 **Sourced Goods**

- Staples Advantage customers frequently request Staples source goods and services on their behalf that could be non-stock or custom in nature and are within the scope of Staples sourcing and distribution capabilities. Staples will also facilitate access to these "Sourced Goods" and services to NJPA and its participating Members.
- The prices for Sourced Goods shall be those prices that appear on the ordering platform at time of order, or as otherwise established between Staples and the City at the time the order is placed.
- Sourced Goods may include additional delivery or handling charges that would be the responsibility of the City.

4.5 **Ceiling Prices** - Staples may offer quantity or volume discounts to the City as permissible in the following sections 1 and 2.

1. Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and related services be offered pursuant to this Contract at prices above this ceiling price without request and approval by NJPA. Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.
2. Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

4.6 **Volume Price Discounts** – Staples is free to offer volume commitment discounts from the contract pricing documented in this agreement. Volume considerations shall be determined between Staples and the City on a case-by-case basis.

4.7 **Minimum Order** – There shall be no minimum order size per order ("Minimum Order Size").

4.8 **Delivery** - There are no additional charges associated with standard delivery from Staples Advantage. Common delivery exceptions that require a surcharge include:

- Furniture unpacking or assembly and/or moving or removal
- Expedited deliveries
- Deliveries outside Staples' standard distribution area (i.e. offshore including Hawaii and Alaska)
- Manufacturer direct or special orders

Surcharges are calculated on a per-order basis and are to be agreed upon by the City.

4.9 Staples / Faison cannot offer a separate pricing structure or charge an additional fee(s) for credit procurement card purchases.

5.0 **Rebates.**

5.1 Staples will pay the City the standard NJPA volume rebates as provided by the NJPA Program.

NJPA Rebate Schedule as followed: Payment of all

Staples will pay each participating NJPA member a volume rebate of such member's Net Sales annually, to be paid within forty-five (45) calendar days of each annual anniversary of the Member's first order date, calculated as follows or as otherwise agreed to in writing by Staples and the member ("Volume Rebate"):

Net Sales	Volume Rebate
\$ 0.00 - \$ 75,000	0%

\$ 75,000.01 - \$150,000	1%
\$150,000.01 - \$300,000	2%
\$300,000.01 - \$500,000	3%
\$500,000.01 - \$750,000	4%
\$750,000.01 or more	5%

5.2

Payment of all Volume Rebates paid hereunder is (i)

contingent upon the member paying all invoices within the payment terms specified in the contract; and (ii) based on the individual member's aggregate annual Net Sales and is payable back to dollar one.

"Net Sales" - Net Sales will be defined as the gross sales price of the applicable products sold under this Contract, less shipping costs (including freight charges and insurance), taxes, duties, any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid, and also excluding purchases made via staples.com, or any Staples retail channel.

6.0 **Retail Stores** - Contract pricing is available at Staples retail stores on NJPA contract items (Retail store spend does not apply to rebate accruals)

7.0 **Conflict.** In the event of conflict between this MPO Agreement and the NJPA Agreement, the terms and conditions of this MPO Agreement shall control.

8.0 Staples agrees to provide the following account and program management for the City with regular business reviews with reporting categories that consist of, but are not limited to, the following:

- Activity reports (Usage, Service Level and Compliance reports delivered by the City's Staples account team)
- Online reports (User and Spending reports available through Staples e-commerce site)
- Environmental reports (delivered by your Staples account team)
- Custom reports are available upon request (delivered by your Staples account team)

8.1 Tailored trainings and site audits to discover ongoing program cost savings.

8.2 Next-business day delivery for orders placed by 3:00 pm the previous business day. Special order or non-stock items will be delivered based on sourcing requirements and advance knowledge of estimated consumption.

8.3 Easy and efficient StaplesAdvantage.com and Faison ediversitynetwork.com ordering web site and proactively managed City & County specific online shopping list.

9.0 **Small/Minority/Disadvantaged Business Participation:**

Staples is committed to engaging a local Minority Business Enterprise. As part of this agreement, Staples will partner with Faison Office Products in order to provide services for select City agencies to be determined after the first quarter of 2016.

As there are additional costs involved in adding Faison Office Products participation in this agreement, the NJPA rebate schedule (Section 5.1) will be reduced from 5% to 3% on the portion of the Net Sales that are ordered directly through Faison. The City, Staples and Faison will agree to the specific agencies that will be serviced by Faison under this Agreement. It is the intent of the parties that approximately 30% of the Net Sales will be placed through Faison.

VENDOR PERFORMANCE MANAGEMENT:

The Purchasing Department may administer a vendor performance management program as part this agreement. The purpose of this program is to create a method for documenting and advising the Purchasing Department of exceptional performance or any problems related to the purchased goods and services.

Staples is required to furnish a performance report to the buyer on a quarterly basis, or as requested, providing at a minimum the following information:

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Percentage of items backordered
- Average delivery time for stock material
- Average delivery time for backorders

AIRPORT SECURITY:

It is a material requirement of this Purchase Order or Contractual Agreement that the Contractor shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Contractor shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by the Contractor or any of its employees, subcontractors, and contractors of any rule, regulation, or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Contract for cause.

The Contractor shall promptly upon notice of award of this Purchase Order or Contractual Agreement, meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for Contractor's operations under this Contract. The Contractor shall obtain the proper access authorizations for all of its employees, subcontractors, and contractors who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Contractor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Purchase Order or Contractual Agreement, the Contractor shall take immediate steps to comply with security modifications which occur as a result of the changed status. The Contractor may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Contractor's operations at the Airport.

The Contractor shall return to the City at the expiration or termination of this Contract, or upon demand by the City, all access keys or access badges issued to it for any area of the Airport, whether or not restricted. If the Contractor fails to do so, the Consultant shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of

such costs from any amounts due and payable to the Contractor under this Purchase Order or Contractual Agreement.

Laws, Regulations, Taxes and Permits

The Contractor shall procure all permits and licenses, pay all charges, taxes and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.

The Contractor, at all times, shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules and regulations in any manner affecting the conduct of the work.

Without limiting the foregoing, the Contractor shall establish appropriate procedures and controls so that services under this Contract will not be performed by using any alien who is not legally eligible for such employment under United States Immigration laws. Failure to comply with this condition satisfactorily may cause the City to terminate this Contract.