



Contract Number

SAP Number

Preschool Services Department

Department Contract Representative	N. Michelle Petersen
Telephone Number	909-386-8369
Contractor	eSpecial Needs
Contractor Representative	Danielle Kouri
Telephone Number	314-222-0436
Contract Term	December 17, 2025, through November 30, 2030
Original Contract Amount	\$30,000,000 Aggregate
Amendment Amount	N/A
Total Contract Amount	\$30,000,000 Aggregate
Cost Center	5911032220
Grant Number (if applicable)	N/A

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County, Preschool Services Department (County / PSD) desires to designate a contractor of choice to provided preschool classroom supplies and outdoor equipment, as further described in a statement of work (the "Services"); and

WHEREAS, the County conducted a competitive process to find *eSpecial Needs* (Contractor) to provide these services, and

WHEREAS, based upon and in reliance on the representations of Contractor in its response to the County's Request for Proposals, the County finds Contractor qualified to provide preschool classroom supplies and outdoor equipment; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

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- A. PRICING LIST

A. DEFINITIONS

1. Contract – The legal agreement between the County and the Contractor.
2. Human Services – San Bernardino County Human Services (HS), a system of integrated services, where the programs and resources of nine (9) County departments come together to provide a rich, more complete array of services to the citizens of San Bernardino County under one coordinated effort.
3. Services – The required services described in this Contract.

B. CONTRACTOR RESPONSIBILITIES

Contractor shall:

1. Provide the requested classroom supplies, or outdoor equipment within thirty (30) calendar days after receipt of request.
 - a. While Contractor will make commercially reasonable efforts to provide requested items within thirty (30) calendar days, certain products may require longer lead times due to manufacturing, customization, or supplier availability. Contractor will notify County of any items requiring additional lead time, and such items shall not be considered late or in breach provided timely notice is given.
2. Notify the County of any out-of-stock items or back orders.
3. Invoice the county upon delivery of items; the invoice must not include any undelivered items.
4. Issue refunds on returned goods within (30) calendar days.
5. Contractor shall complete delivery of items ordered to destinations set forth in the purchase order. Each purchase order shipment shall be accompanied by a delivery confirmation or bill of lading itemizing all materials, goods, supplies or equipment shipped. Partial shipments are acceptable.

C. GENERAL CONTRACT REQUIREMENTS

1. **Recitals** – The recitals set forth above are true and correct and incorporated herein by this reference.
2. **Contract Amendments** – Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract, and approved by the person(s) authorized to do so on behalf of Contractor and County.
3. **Contract Assignability** – Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.
4. **Contract Exclusivity** – This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work or receive compensation other than on a per order basis, under the terms of this Contract.
5. **Attorney's Fees and Costs** – If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.
6. **Change of Address** – Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.
7. **Choice of Law** – This Contract shall be governed by and construed according to the laws of the State of California.

8. **Compliance with County Policy** – In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, “County Policies”). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor’s employees, agents, representatives, and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

9. **Primary Point of Contact** – Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

10. **County Representative** – The *PSD Director* or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

11. **Damage to County Property** – Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County’s sole discretion.

12. **Debarment and Suspension** – Contractor agrees to comply with the applicable federal suspension and debarment regulations, including, but not limited to Title 48 Code of Federal Regulations (CFR), Chapter 1, Subchapter B, Part 9, Subpart 9.4 (48 C.F.R. Section 9.400 et seq.).

Contractor certifies that it and its principals and subcontractors:

- a. Are not presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration’s System for Award Management website <https://www.sam.gov>).
- b. Have not within a three (3) year period preceding this Contract been convicted of or had a judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; or a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in Section C, Paragraph 14, subparagraph b herein; and
- d. Have not within a three (3) year period preceding this Contract had one (1) or more public transactions (federal, state or local) terminated for cause or default.

Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

13. **Drug and Alcohol-Free Workplace** – In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor’s employees, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be impaired in any way because of being under the influence of alcohol or an illegal or controlled substance.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor’s employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County, on County property, or using County equipment, of the County’s objective of a safe, healthful and productive workplace and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor’s employees are determined by the County not to be in compliance with above.

14. **Duration of Terms** – This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

15. **Environmental Requirements** – In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of postconsumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County’s environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

EPA Regulations – If the amount available to Contractor under the Contract exceeds \$100,000, Contractor will agree to comply with the Clean Air Act (42 U.S.C. section 7401 et seq.); section 508 of the Clean Water Act (33 U.S.C. section 1251 et seq.); Executive Order 11738 [38 Fed. Reg. 25161 (Sept. 10, 1973)]; and Environmental Protection Agency regulations (40 C.F.R.).

State Energy Conservation Clause – Contractor shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (California Code of Regulations (CCR), title 20, section 1401 et seq.).

16. **Improper Influence** – Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

17. **Improper Consideration** – Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

18. **Informal Dispute Resolution** – In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

19. **Legality and Severability** – The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders, and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

20. **Licenses, Permits and/or Certifications** – Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by federal, state, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

21. **Material Misstatement/Misrepresentation** – If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

22. **Mutual Covenants** – The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

23. **Nondisclosure** – Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

24. **Notice of Delays** – Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.
25. **Ownership of Documents** – All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.
26. **Air, Water Pollution Control, Safety and Health** – Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, including fire clearances, which apply to the work performed pursuant to this Contract.
27. **Records** – Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy. Please refer to http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl for further information.

Contractors expending \$750,000 or more in federal funds annually shall have a single audit or program specific audit performed. A copy of the audit shall be maintained as part of the program's fiscal records.

All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding payments for billings submitted and for termination of the Contract.

28. **Relationship of the Parties** – Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.
29. **Release of Information** – No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the PSD Director or their designee and shall include County approved branding.
30. **Representation of the County** – In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of San Bernardino County.

31. **Strict Performance** – Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party’s right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.
32. **Subcontracting** – Contractor agrees not to enter into any subcontracting contracts for work contemplated under the Contract without first obtaining written approval from the County and the Director of PSD through the HS Contracts Unit. Any subcontractor shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor’s contract.

For any subcontractor, Contractor shall:

- a. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- b. Ensure that the subcontractor follows County’s reporting formats and procedures as specified by County.
- c. Include in the subcontractor’s subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities, C. General Contract Requirements and G. Indemnification and Insurance Requirements.
- d. Be responsible for monitoring subcontractor annually to determine subcontractor’s compliance with the provisions of this contract. At County’s request, Contractor shall provide subcontractor’s annual monitoring reports and supporting documentation.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the subcontractors. Contractor agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with County.

33. **Subpoena** – In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.
34. **Termination for Convenience** – The County reserves the right to terminate the Contract for its convenience, with or without cause, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.
35. **Time of the Essence** – Time is of the essence in performance of this Contract and of each of its provisions.
36. **Venue** – The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

37. **Conflict of Interest** – Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict-of-interest situation exists, any increase in costs, associated with the conflict-of-interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor’s officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.
38. **Former County Administrative Officials** – Contractor agrees to provide, or has already provided, information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five (5) years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, “County administrative official” is defined as a member of the Board of Supervisors or such officer’s staff, County Executive Officer or member of such officer’s staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.
39. **Iran Contracting Act** – IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.
- Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of an existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.
40. **California Consumer Privacy Act** – To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA) (California Civil Code sections 1798.100, et seq.). For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at California Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to California Civil Code section 1798.150(b) alleging a violation of the CCPA that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to California Civil Code section 1798.155(b).
41. **Vacancies** – Contractor shall notify County of any continuing vacancies and any positions that become vacant during the term of this Contract that will result in reduction of services to be provided under this Contract. Upon notice of vacancies, the Contractor shall apprise County of the steps being taken to provide the services and to fill the position as expeditiously as possible.

Vacancies and associated problems shall be reported to County on each periodically required report for the duration of said vacancies and/or problems.

42. **Pro-Children Act of 1994** – Contractor will comply with the Environmental Tobacco Smoke/Pro-Children Act of 1994 (20 U.S.C. 6081 et seq.).
43. **Americans with Disabilities Act** – Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).
44. **Public Accessibility** – Contractor shall ensure that Services provided are accessible by public transportation.
45. **Ownership Tools** – The State and County shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with federal financial participation. The Federal Government (Department of Health and Human Services) reserves a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for Federal Government purposes, such software modification, and documentation. Proprietary software packages that are sold or leased to the general public are not subject to the ownership provisions.
46. **Force Majeure** – Neither party shall be liable for failure or delay to perform obligations under this Contract, which have become practicably impossible because of circumstances beyond the reasonable control of the applicable party. Such circumstances include without limitation, natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than thirty (30) days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof. All delivery dates under this Contract affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.
47. **Order of Precedence** – In the event of any inconsistency between the terms of this Contract and any forms, attachments, statements of work (SOW), or specifications which may be incorporated into this Contract, the following order of precedence shall apply:
 - a. This Contract,
 - b. Attachments to this Contract, as indicated herein, and
 - c. Price lists, SOWs, and other documents attached hereto or incorporated herein.
48. **Supersedes Prior Agreements** – This Contract supersedes and replaces all previous contracts, agreements and understandings, oral, written and implied, between the County and Contractor hereto with respect to the subject matter hereof. All such prior contracts, agreements and understandings are hereby terminated and deemed of no further force or effect.
49. **Professional Conduct** – Contractor agrees to develop and maintain professional relationships with County, County staff, and clients.
50. **Freight and Shipping Charges**

Standard parcel-shipped items include all shipping and handling charges in the unit prices listed in Attachment A. No additional freight charges apply under normal delivery conditions.

Items identified as oversized or requiring LTL/truck freight ("Truck Items") do **not** include shipping costs. Freight for these items will be quoted per request based on product specifications, quantity, delivery location, and any required accessorial services. Contractor will provide a written freight quote, and shipment will proceed only after County approval.

If accessorial services are required at delivery, related charges will be added to the approved freight. Title and risk of loss for Truck Items transfer to County upon delivery to the designated location, with any transit damage managed through the carrier's claim process.

D. TERM OF CONTRACT

1. This Contract is effective as of December 17, 2025, and expires November 30, 2030, but may be terminated earlier in accordance with provisions of this Contract.
2. The County may terminate the Contract immediately if the funds under Section F Paragraph 1 are not available to the County, and under the provisions of Section I, Paragraph 3, Item e, of the Contract, or as otherwise provided in this Contract. In addition, the Contract may be terminated without cause by the County by serving a written notice to the Contractor thirty (30) days in advance of termination. The Assistant Executive Officer is authorized to exercise the County's rights with respect to any termination of this Contract.
3. Contractor shall only be reimbursed for costs and uncancelable obligations incurred prior to the date of termination. Contractor shall not be reimbursed for costs incurred after the date of termination.
4. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

E. COUNTY RESPONSIBILITIES

1. County shall request a replacement order or initiate a return on problem items within sixty (60) calendar days.
2. County shall issue a purchase order containing all applicable requirements to Contractor.

F. FISCAL PROVISIONS

1. The aggregate amount of payment under this Contract is a combined total for all Classroom Supplies and Outdoor Equipment Contractors and together shall not exceed \$30,000,000, with a not to exceed annual amount of \$6,000,000 which shall be subject to the availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
2. Invoices shall be issued with a Net sixty (60) day payment term with corresponding SAP Contract and/or Purchase Order number stated on the invoice. Invoices shall specify items and deliverables for all items on the purchase order as described on the "Pricing List" herein listed as Attachment A. Invoices shall be submitted to psdaccountspayable@psd.sbcounty.gov.
3. Payment shall be Net sixty (60) days from receipt and approval of invoice unless otherwise stated. Discounts will be calculated from receipt of merchandise or invoice, whichever is later.
4. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
5. County is exempt from federal excise taxes, and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any state or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
6. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall

not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.

7. Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
8. Price Adjustments and Cost Escalation

Contractor may request a price adjustment for any item in Attachment A when increases occur in manufacturer or supplier pricing, raw materials, labor, freight, tariffs, or other costs outside Contractor's control. Contractor will submit proposed adjustments to County in writing with reasonable supporting documentation. No adjustment is effective until approved by County in writing (email acceptable). Approved adjustments apply only to future orders and shall not be retroactive unless mutually agreed in writing.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. **Indemnification** – The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.
2. **Additional Insured** – All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. **Waiver of Subrogation Rights** – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.
4. **Policies Primary and Non-Contributory** – All policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the County.
5. **Severability of Interests** – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.
6. **Proof of Coverage** – The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such

insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. **Acceptability of Insurance Carrier** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.
8. **Deductibles and Self-Insured Retention** – Any and all deductibles or self-insured retentions in excess of ten thousand (\$10,000) shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.
10. **Insurance Review** – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

11. **Insurance Specifications** – The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers’ Compensation/Employer’s Liability – A program of Workers’ Compensation insurance or a state approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with two hundred fifty thousand dollar (\$250,000) limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Director of Risk Management.

With respect to Contractors that are nonprofit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- b. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- 1) Premises operations and mobile equipment.
 - 2) Products and completed operations.
 - 3) Broad form property damage (including completed operations).
 - 4) Explosion, collapse and underground hazards.
 - 5) Personal injury.
 - 6) Contractual liability.
 - 7) Two million dollars (\$2,000,000) general aggregate limit.
- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
- If the Contractor is transporting one (1) or more nonemployee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.
- If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

H. RIGHT TO MONITOR AND AUDIT

1. The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
2. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, state and federal audits are completed, whichever is later. Records of the Contractor which do not pertain to the services under this Contract may be subject to review or audit unless provided in this or another Contract. Technical program data shall be retained locally and made available upon the County's reasonable advance written notice or turned over to County. If said records are not made available at the scheduled monitoring visit, Contractor may, at County's option, be required to reimburse County for expenses incurred due to required rescheduling of monitoring visit(s). Such reimbursement will not exceed fifty dollars (\$50) per hour (including travel time) and may be deducted from the following month's claim for reimbursement.

3. Contractor shall cooperate with County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by this Contract.
4. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of County's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of the Contractor.
5. Upon County request, Contractor shall hire a licensed Certified Public Accountant, approved by the County, who shall prepare and file with County, within sixty (60) days after the termination of the Contract, a certified fiscal audit of related expenditures during the term of the Contract and a program compliance audit.
6. Pursuant to Code of Federal Regulations (CFR) – Title 2 CFR 200.501, contractors expending one million dollars (\$1,000,000) or more in federal funds within the Contractor's fiscal year must have a single audit or program specific audit performed. A copy of the audit performed in accordance with Title 2 CFR 200.501 shall be submitted to the County within thirty (30) days of completion, but no later than nine (9) months following the end of the Contractor's fiscal year. Please refer to http://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1501&rgn=dv8 for further information.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

1. In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level or performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.
2. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
3. In the event of a noncured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - c. Withhold funds pending duration of the breach; and/or
 - d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.
4. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one (1) or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

J. RESERVED

K. EQUAL EMPLOYMENT/EMPLOYMENT DISCRIMINATION/CIVIL RIGHTS

1. Equal Employment Opportunity Program - Contractor agrees to comply with: the provisions of the San Bernardino County Equal Employment Opportunity Program and rules and regulations adopted pursuant thereto; Executive Order 11246 [30 Fed. Reg. 12319 (Sept. 24, 1965)], as amended by Executive Orders 11375, 11625, 12138, 12432, 12250, and 13672; Title VII of the Civil Rights Act of 1964 (42 U.S.C. section 2000(e), et seq.); Division 21 of the California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000; the California Fair Employment and Housing Act (Cal. Gov. Code section 12900, et seq.); and other applicable federal, state, and County laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.

The Contractor shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, sex, marital status, age, political affiliation or disability. Information on the above rules and regulations may be obtained from the County.

2. Employment Discrimination – During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment or service recipient because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable federal, state and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

L. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or by email, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County
HS Administration, Contracts Unit
150 S. Lena Road
San Bernardino, CA 92415
Email: hsascontractsunit@hss.sbcounty.gov

eSpecial Needs
1850 Borman Court
St. Louis, MO 63146
Phone: 877-664-4565 Ext. 1
Email: orders@especialneeds.com

Notice shall be deemed communicated two (2) County working days from the time of mailing, facsimile, or email, if delivered as provided in this paragraph.

M. ENTIRE AGREEMENT

1. This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.
2. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

IN WITNESS WHEREOF, San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

eSPECIAL NEEDS

(Print or type name of corporation, company, contractor, etc.)

►

Dawn Rowe, Chair, Board of Supervisors

By ► _____
(Authorized signature - sign in blue ink)

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Name Danielle Kouri
(Print or type name of person signing contract)

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

Title Project Manager
(Print or Type)

By _____
Deputy

Dated: _____

Address 1850 Borman Court
St. Louis, MO 63146

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

►

Adam Ebright, Deputy County Counsel

►

Lisa Rivas-Ordaz, Contracts Manager

►

Arlene Molina, Director
Preschool Services Department

Date _____

Date _____

Date _____

eSpecial Needs Pricing List

ITB Item List: 5-Year Sample				Vendor Name
				eSpecial Needs
Line Item #	Description	Estimated Quantity	Unit	<i>Some items do not include shipping/frieght costs</i>
1	Adjustable Door Gate	50	each	N/A
2	All-Weather Cover for Outdoor Storage	30	each	N/A
3	Aquarium, 5 gallon max	40	each	N/A
4	Art Drying Rack	30	each	N/A
5	Balance Bar/Beam	20	each	\$33.96
6	Basket Clips with Label	100	set	N/A
7	Changing Paper for Changing Table	200	each	N/A
8	Changing Station with Storage	30	each	\$568.76
9	Changing Table with Steps	30	each	\$1,045.76
10	Circular Table with Adjustable Legs	100	each	\$268.19
11	Classroom Carpets - Circular	100	each	N/A
12	Classroom Carpets - Square/ Rectangle	100	each	N/A
13	Construction Paper - Various Size & Colors	1000	case	N/A
14	Daiper Trash Bags	200	pack	N/A
15	Dishwasher-Safe Baskets	30	set	N/A
16	Dot Art Painters	50	set	\$17.09
17	Easel Paper Roll	40	each	N/A
18	Folding Rest Mat	30	each	N/A
19	Gallon of Glue	100	each	N/A

ITB Item List: 5-Year Sample				Vendor Name
				eSpecial Needs
Line Item #	Description	Estimated Quantity	Unit	
20	Giant Washable Color Ink Pads	100	set	N/A
21	Heavy-Duty Stacking Chairs - Multiple Sizes/Heights	500	each	\$53.96
22	Indoor Toddler Kitchen Unit	20	each	\$460.76
23	Indoor/Outdoor Equipment Cart	30	each	\$517.51
24	Indoor/Outdoor Heavy-Duty Pillows	50	set	N/A
25	Jumbo Classroom Markers	100	pack	N/A
26	Jumbo Puzzle Set	50	set	\$29.95
27	Library Book Rack	30	each	N/A
28	Magnetic Play Tiles/ Blocks	50	each	\$22.06
29	Mobile Locking Teacher Cabinet	30	each	N/A
30	Molding/Sensory Dough	100	set	\$20.66
31	Outdoor Benches - Various Sizes	40	each	\$862.71
32	Outdoor Classroom Rolling Cart	30	each	N/A
33	Outdoor Couch, Weather Resistant	20	each	N/A
34	Outdoor Large Building Blocks	50	set	N/A
35	Outdoor Sand, 25 lb	100	each	N/A
36	Outdoor Storage Unit	30	each	\$1,233.38
37	Outdoor Toddler Kitchen Unit	20	each	\$2,193.81
38	Play Dress-Up Center with Outfits	30	each	N/A
39	Play Floor Tiles - Various Sizes	30	set	\$251.56

ITB Item List: 5-Year Sample				Vendor Name
				eSpecial Needs
Line Item #	Description	Estimated Quantity	Unit	
40	Play Stepping-Stones	30	set	\$70.95
41	Railway Set	30	set	N/A
42	Reading/ Privacy Nook	20	each	N/A
43	Rectangular Table with Adjustable Legs	100	each	\$267.76
44	Rolling Art Table/Cart	30	each	\$204.00
45	Sand Plastic Molds	30	set	N/A
46	Sensory Foam Paint	100	set	\$21.24
47	Sensory Sand	50	set	\$102.00
48	Sports Activity Cart	30	each	\$362.06
49	Stand-Up Magnetic White Board	30	each	\$99.95
50	Stationary Tricycle	30	each	N/A
51	Tandem Tricycle	10	each	\$404.56
52	Toddler Basketball Hoop	30	each	N/A
53	Toddler Chair with Ball Glides	100	each	N/A
54	Toddler Coat Lockers	30	each	\$404.56
55	Toddler Cot Blanket	3000	each	\$85.00
56	Toddler Cot Carrier	40	each	\$277.06
57	Toddler Cot Plastic Cover	6000	each	N/A
58	Toddler Cot Sheets	6000	each	N/A
59	Toddler Cots	1000	each	N/A

ITB Item List: 5-Year Sample				Vendor Name
				eSpecial Needs
Line Item #	Description	Estimated Quantity	Unit	
60	Toddler Easel/ Easel Set	20	each	\$202.50
61	Toddler Indoor Couch	30	each	\$482.76
62	Toddler Jungle Gym	20	each	\$95.16
63	Toddler Kitchen Accessory Set	40	each	N/A
64	Toy Trucks	30	set	\$233.76
65	Trapizoid Table with Adjustable Legs	50	each	\$308.51
66	Tricycle	30	each	\$251.56
67	Washable Paint	100	pack	\$46.95
68	Water and Sand Table	30	each	\$253.79
69	Water Only Table	20	each	\$179.99
70	Wicker Baskets - Various Sizes	400	each	N/A
71	Wooden Doll House	20	each	N/A