



Contract Number

19-530

SAP Number

San Bernardino County Library Department

Department Contract Representative	Melanie Orosco
Telephone Number	(909) 387-2257
Contractor	Children's Plus
Contractor Representative	Michael Beechin
Telephone Number	(708) 946-4100
Contract Term	Sept. 1, 2019 – August 31, 2024
Original Contract Amount	
Amendment Amount	
Total Contract Amount	
Cost Center	6400002600

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (County) desires to purchase youth library materials from Children's Plus, Inc., (Contractor) and utilize Contractor's materials processing service; and

WHEREAS, Contractor is the premier children's and young adult vendor for public libraries and schools, offering sole source products and services; and

WHEREAS, the County finds Contractor qualified to provide said products and services; and

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

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

A. RESERVED.

B. CONTRACTOR RESPONSIBILITIES

B.1 Contractor shall fulfill orders for products and/or services, placed by the County as described in section E of this Contract and according to the terms set forth in this section B.

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.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.

C.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.

C.6 Reserved.

C.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C. 9 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.

C.10 Confidentiality

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.

C.11 Primary Point of Contact

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.

C.21 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.

C.22 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.

C.23 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of 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.

C.24 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.

C.25 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".

C.26 Nondisclosure

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;

C.32 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.

C.33 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 County.

C.34 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 the County of San Bernardino.

C.35 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.

C.36 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 36.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

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.

C. 37 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or 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.

requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.44 Reserved.

C.45 Reserved.

C.46 Reserved.

C.47 Reserved.

C. 48. Reserved.

D. TERM OF CONTRACT

This Contract is effective as of September 1, 2019 and expires August 31, 2024 but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

E.1 At its election, County shall place orders for products and services, according to the terms set forth in section B of this Contract, and issue a County Purchase Order for the same. County's Standard Purchase Order is attached hereto as Attachment A. Orders shall be placed at the sole discretion of County. County is not obligated to place any minimum number of orders for products and/or services.

E.2 County shall make payment as provided for in section F of this Contract.

E.3 Any orders placed shall be subject to the provisions of this Contract, the County of San Bernardino Standard Purchase Order terms and conditions attached hereto as Attachment A and Contractor's terms and conditions, attached hereto as Attachment B. County agrees to be bound by the same.

F. FISCAL PROVISIONS

additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.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.

G.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.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.

G.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.

G.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".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.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.

G.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

If the Contractor is transporting one or more non-employee 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.

G.11.4 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.

G.11.5 **Reserved.**

G.11.6 **Reserved.**

G.11.7 **Reserved.**

H. RIGHT TO MONITOR AND AUDIT

H.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.

H.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.

I. RESERVED.

J. 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 deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino
Library Department
777 East Rialto Avenue
San Bernardino, CA 92415-0035*

*Children's Plus Inc.
1387 Dutch American Way
Beecher, IL 90401*

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

K. ENTIRE AGREEMENT

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,

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

COUNTY OF SAN BERNARDINO

► 
Curt Hagman, Chairman, Board of Supervisors

Dated: **AUG 06 2019**

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

—Laura H. Welch Lyana Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By  Deputy



Children's Plus, Inc.

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

By 

(Authorized signature - sign in blue ink)

Name Michael Beecher

(Print or type name of person signing contract)

Title Chief Operating Officer

(Print or Type)

Dated: 7/9/19

Address 1387 Dutch American Way
Beecher, IL 60401

FOR COUNTY USE ONLY

Approved as to Legal Form

► 
Katherine Hardy, Deputy County Counsel

Date 7/19/19

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► 

Michael Jimenez, County Librarian

Date 7-19-2019

all risks as to items rejected or requiring correction after notice of such rejection or correction is given.

6. CHANGES: This purchase order may, at any time, by written order, be changed as to the materials or services to be furnished, quantities ordered, unit price, discount, delivery point or arrangements, terms, or any other matters affecting a valid order. In the event such change causes an increase or decrease in cost of performance hereunder, an equitable adjustment will be made for the cost, subject to the written approval of the Purchasing Agent. No change or other modification to this purchase order, by invoice, shipping documents or other communication, shall be binding upon the Purchasing Agent unless accepted in writing.

7. VARIATIONS-QUANTITIES No variation in the quality or quantity of any item called for by this purchase order shall be acceptable except pursuant to written change order so authorizing, and no change in cost shall be valid unless so ordered.

8. TERMINATION: This purchase order may be terminated in whole or in any part at any time by written notice to Vendor. Such termination shall be effective in the quantity, manner, and time specified in such notice and the County shall be liable at the stipulated price for only such materials and/or services as have been delivered, and/or rendered and accepted. The County shall not be liable for any excess costs arising out of such termination, and failure of the Vendor to cease delivery and/or work upon receipt of termination notice shall not occasion a claim for extra costs.

9. LIABILITY: The County shall not be responsible for any damages that may be claimed by reason of death or injury of the person of the Vendor's officers, agents, employees, invitees, or licensees, or for damage to any property of the Vendor or that may arise or result at any time because of personal injury or damage to property sustained by any other person or persons, which may have been caused or contributed to, proximately, by reason of, or in the course of carrying out this purchase order. The Vendor shall assume full responsibility for the result of any claim arising under this purchase order, and the Vendor shall indemnify, defend, and hold harmless the County, all officers and employees thereof, from all damages, costs, or expenses, in law or in equity, because of personal injury, property damage, or alleged or actual patent infringements, based on the performance of this purchase order.

10. DELAYS-DAMAGES: In the event the Vendor fails to perform this purchase order within the time specified, if any, or a reasonable time after placement of the order, the Purchasing Agent may, by written notice, order the Vendor to cease further deliveries and may hold the Vendor liable for any damage caused the County by reason of such delay. Periods of performance may be extended if the facts as to the cause of the delay justify such extension in the opinion of the Purchasing Agent.

to cancel, terminate or suspend the purchase order. The parties agree that in the event the Vendor violates the anti-discrimination provisions of the purchase order, the County shall at its option and in lieu of cancellation, termination or suspension of this purchase order, be entitled to liquidated damages pursuant to California Civil Code section 1671 of the greater of ten percent (10%) of the purchase order amount or One Thousand Dollars (\$1000).

18. **GOVERNING LAW AND VENUE:** This purchase order shall be governed by and construed in accordance with the laws of the State of California. Vendor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this purchase order, and further agrees and consents that venue for any action shall be exclusively in the County of San Bernardino, California.

19. **ASSIGNMENT AND DELEGATION:** Vendor shall not assign its rights or delegate its duties under this purchase order without County's prior written authorization and any assignment or delegation without such authorization shall be null and void and shall constitute a material breach of this purchase order. The Purchasing Agent may immediately cancel or terminate the purchase order.

20. **MOST FAVORED CUSTOMER:** Vendor represents that the prices charged the County in this purchase order do not exceed existing selling prices to other customers for the same or substantially similar articles or services for comparable quantities under similar terms and conditions.

21. **COVENANT AGAINST GRATUITIES:** The offering of gifts, excluding token gifts of a promotional or advertising nature, or gratuities by the Vendor or any agent or representative of the Vendor is strictly prohibited. The Vendor warrants that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of the County with a view toward securing this purchase order or favorable treatment with respect to any determination concerning this.



Sole Source Products/Services

- Unique partnership approach to collection development at no cost to SBCL
- Processing spine label with Accelerated Reader level displayed in-line with call number
- CPI Prebound Library Books
 - Laminated covers are protective and easy to clean
 - Each book is assembled to the highest quality control specifications
 - Round library corners make titles less likely to snag and fray
 - Davey Red label high density binder boards add durability and prevents loss of shape
 - High quality synthetic adhesive increases longevity and resists mold

Our partnership with SBCL is truly unique. Children's Plus takes a hands-on and customized approach in curating unique collections for each opportunity and delivers materials shelf or event ready. We appreciate the opportunity to partner with San Bernardino County Library and look forward to servicing your libraries in the future.

Respectfully,

Michael Beechin, COO



Children's Plus, Inc.

1387 Dutch American Way Beecher Illinois 60401

Phone 800-230-1279 Fax 800-896-7213