ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF AWARD OF CONTRACT

TO: MSC INDUSTRIAL SUPPLY
7425 WHITE PINE ROAD
RICHMOND, VIRGINIA 23237

DATE ISSUED: 5/05/2014

CONTRACT NUMBER: 689-14

CONTRACT TITLE: DES - MSC
Industrial Supply

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is hereby awarded the above referenced contract. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on NOVEMBER 29, 2014. The contract documents consist of the terms, conditions, specifications and pricing of Agreement No. 689-14 (attached).

NOTES:

1. NO WORK SHALL BE PERFORMED BY THE CONTRACTOR WITHOUT PRIOR ACCEPTANCE BY THE COUNTY OF AN INSURANCE CERTIFICATE INCORPORATING ALL COVERAGES AND ENDORSEMENTS REQUIRED BY THE ABOVE-REFERENCED AGREEMENT.

2. ALL PO’S COVERING WORK UNDER THIS CONTRACT MUST BE APPROVED IN ADVANCE BY A HUMAN RESOURCES REPRESENTATIVE.

ATTACHMENTS:
AGREEMENT NO. 689-14

CONTRACT PRICING:
REFER TO ATTACHED AGREEMENT

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

CONFLICT OF INTEREST:
PRIOR TO PLACING AN ORDER FOR GOODS OR SERVICES UNDER THIS CONTRACT, EMPLOYEES ARE RESPONSIBLE FOR ENSURING THAT THEY NOT PROHIBITED FROM PARTICIPATING IN THE CONTRACT UNDER THE RULES SET FORTH IN ARTICLE 9-103 OF THE ARLINGTON COUNTY PURCHASING RESOLUTION.

Notice of Award of Contract
INSURANCE:
NO WORK SHALL BE PERFORMED UNTIL THE CONTRACTOR HAS PROVIDED THE COUNTY A
VALID INSURANCE CERTIFICATE COVERING ALL POLICIES, ENDORSEMENTS AND LIMITS
SPECIFIED IN THE AGREEMENT.

VENDOR CONTACT: MARLA FERGERSON
VENDOR TEL. NO. 804-539-2181

VENDOR PAYMENT TERMS: NET 30 DAYS
VENDOR E-MAIL: FERGERSM@MSCDIRECT.COM

COUNTY CONTACT: ORDALE STERLING
COUNTY TEL. NO.: 703-228-689
COUNTY E-MAIL: osterling@arlingtonva.us

CONTRACT AUTHORIZATION

Elizabeth B. Dooley CFO, CPPB
Assistant Purchasing Agent

5/5/14 Date

Notice of Award of Contract
ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201

AGREEMENT NO. 689-14

THIS RIDER AGREEMENT (hereinafter “Agreement”) is made, on the date of
its execution by the County, between MSC Industrial Supply Co., Inc.; 7425 White Pine Road, Richmond, Virginia 23237 (“Contractor”), a New
York Corporation authorized to transact business in the Commonwealth of
Virginia, and the County Board of Arlington County, Virginia
(“County”). The County and the Contractor, for the consideration and
quantity(ies) specified herein or specified in a County Purchase Order
referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS
The Contract Documents consist of this Agreement and Exhibit A
(University of Virginia Notice of Award), Exhibit B (Pricing Schedule),
and Exhibit C (University of Virginia Contract No. 0020106 including
all Attachments and Amendments, incorporated herein by reference);
collectively, “Contract Documents” or “Contract.”

This Agreement rides a competitive procurement process conducted by
University of Virginia. The Contractor desires to extend to the County
the same pricing as the Contractor’s agreement with University of
Virginia.

Where the terms and provisions of this Agreement vary from the terms
and provisions of the other Contract Documents, the terms and
provisions of this Agreement shall prevail over the other Contract
Documents and the remaining Contract Documents shall be complementary
to each other and if there are any conflicts the most stringent terms
or provisions shall prevail.

The Contract Documents set forth the entire agreement between the
County and the Contractor. The County and the Contractor agree that no
representative or agent of either of them has made any representation
or promise with respect to the parties’ agreement which is not
contained in the Contract Documents.

2. CONTRACT TERM
The Contractor’s provision of goods for the County (“Work”) shall
commence on the date of execution of this Agreement by the County and
shall be completed no later than November 29, 2014 (“Contract Term”),
subject to any modifications as provided for in the Contract Documents.
3. **CONTRACT PRICING**
The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in Exhibit B (Pricing Schedule) for Work provided by the Contractor, as described in the Scope of Work and required in the Contract Documents, and accepted by the County.

4. **SCOPE OF WORK**
The Contractor agrees to provide the goods and services described in the Contract Documents. The primary purpose of the Work is to provide and deliver building and maintenance supplies.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

5. **REQUIREMENTS CONTRACT (ESTIMATED QUANTITIES)**
During the Contract Term, the Contractor will furnish all of the goods or services described in the Contract Documents if so requested by the County. The Contractor understands and agrees that this is a requirements contract and the County will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the County. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, or any amount, as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that the County may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices set forth in this Contract.

6. **PROJECT OFFICER**
The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

7. **PAYMENT TERMS**
Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work.
which meets the Contract requirements, whichever is later. Payments will be made by the County for goods or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

8. **PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or

b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. **NON-APPROPRIATION**

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made
for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County’s written notice.

10. COUNTY PURCHASE ORDER REQUIREMENT
County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and sole expense.

11. DELIVERY
All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

12. WARRANTY
All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer’s standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers’ warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer’s or supplier’s warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

13. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS
Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County’s right of inspection shall not be deemed to relieve the
Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

14. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED
During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.

e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000.00, so that these provisions will apply to each subcontractor or vendor.

15. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.
16. **DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

17. **TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT: CURE**

The Contract shall remain in force for the Contract Term and until the County determines that all the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be
immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs. Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

18. TERMINATION FOR THE CONVENIENCE OF THE COUNTY
The performance of Work under this Contract may be terminated by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the
notice; place no further orders or subcontract for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontractors and settle all outstanding liabilities and claims.

19. **INDEMNIFICATION**

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the “County” for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor’s acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

20. **CONFIDENTIAL INFORMATION**

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

21. **ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-430 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that
it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

22. **COUNTY EMPLOYEES**
No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

23. **FORCE MAJEURE**
The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor’s then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

24. **AUTHORIZED TO TRANSACT BUSINESS**
The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Term of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

25. **RELATION TO THE COUNTY**
The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.
26. **ANTITRUST**
By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.

27. **AUDIT**
The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

28. **ASSIGNMENT**
The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

29. **AMENDMENTS**
Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

30. **ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**
Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

31. **DISPUTE RESOLUTION**
All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from
the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

32. **APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION**
This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

33. **ARBITRATION**
It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

34. **NONEXCLUSIVITY OF REMEDIES**
All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

35. **NO WAIVER**
The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

36. **SEVERABILITY**
The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

37. **NO WAIVER OF SOVEREIGN IMMUNITY**
Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

38. **SURVIVAL OF TERMS**
In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.
39. **HEADINGS**
The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

40. **AMBIGUITIES**
Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

41. **NOTICES**
Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO THE CONTRACTOR:**

MSC Industrial Supply Co., Inc.
Marla Pergerson, Branch Manager
7425 White Pine Road
Richmond, Virginia 23237

**TO THE COUNTY:**

Ordale Sterling, Project Officer
Arlington County, Virginia
WPS North
3111 S. Fern Street 2FL
Arlington, Virginia 22202

AND

Richard D. Warren, Jr., Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

42. **NON-DISCRIMINATION NOTICE**
Arlington County does not discriminate against faith-based organizations.

43. **INSURANCE REQUIREMENTS**
The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain
such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of $100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.

b. Commercial General Liability - $1,000,000 combined single limit coverage with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, non-owned and hired).

d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of $1,000,000.

e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor’s notification from the insurer. It is the Contractor’s responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.
The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

AUTHORIZED SIGNATURE:  

NAME AND TITLE:  RICHARD D. WARREN, JR. PURCHASING AGENT

DATE:  5/5/14

MSC INDUSTRIAL SUPPLY CO., INC.

AUTHORIZED SIGNATURE:  

NAME AND TITLE:  Steve Armstrong, General Counsel

DATE:  5/2/14
EXHIBIT A
UNIVERSITY OF VIRGINIA NOTICE OF AWARD

Agreement Between

The Rector and Visitors of the University of Virginia

and

MSC Industrial Supply Company, Inc.

The Rector and Visitors of the University of Virginia, (the "University") and MSC Industrial Supply Company, Inc. ("MSC") are amending the Agreement dated November 30, 2007 whereby MSC contracted to provide and deliver building and maintenance supplies, materials, and services to the University.

Provision

This provision will be added to the Term, and updated effective November 30, 2012 as follows:

Term

The University and MSC mutually agree to renew the Agreement for an additional period. The period of performance will be November 30, 2012 through November 29, 2014. There are no more renewal options remaining on this Agreement.
**EXHIBIT B**

*UNIVERSITY OF VIRGINIA PRICING SCHEDULE*

<table>
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<th>PRODUCT CATEGORY</th>
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<td>Carbide Round</td>
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<td>Carbide Round - Drills, Carbide</td>
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</table>

*For product list prices, please visit the website: MSCdirect.com*
AGREEMENT

This Agreement, executed this 24th day of November 2007, by and between the Rector and Visitors of the University of Virginia, (the “University”) and MSC Industrial Supply Company, Inc (“MSC”).

TERM

The term of this Agreement will be for five years effective upon execution of the Agreement, with the ability to renew on the same terms and conditions, for one additional two year period. MSC and the University will mutually agree at least 180 days prior to each renewal option whether to renew the terms of the Agreement.

WITNESS

By its Request for Proposal (RFP) HM020106 for Furnishing and Delivering Materials/Supplies/Services dated February 1, 2006, the University requested proposals from firms to provide and deliver building and maintenance supplies, materials and services (the “Goods and Services”). In response to the RFP, MSC submitted a written proposal dated March 3, 2006, and a letter responding to negotiations dated September 17, 2007. The parties, having negotiated concerning the Goods and Services wish to express in this Agreement the basis on which MSC will provide the Goods and Services to the University.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

1. Contents

These documents are hereby incorporated into this Agreement:

A. The RFP dated February 1, 2006, including its Attachments 1, 2, 3; and 4;
B. RFP addendum 001 dated February 16, 2006;
C. RFP addendum 002 dated February 24, 2006;
D. RFP addendum 003 dated April 5, 2006;
B. Agreement Attachment 1, Contractual Provisions;
C. Agreement Attachment 2, Procedure for Resolution of Contractual Claims;
D. MSC's Proposal dated March 3, 2006; and
E. MSC's response to negotiations with the University, consisting of a letter dated September 17, 2007 from Marla Fleisher (MSC) to John Gerding.

To the extent that the terms of the various Agreement documents are in conflict, the terms of this Agreement, the RFP, addendum 001, 002, and 003, Agreement Attachment 1, and Agreement Attachment 2 will prevail over all other Agreement documentation.

2. Specific Provisions

These specific provisions are restated here for clarification:

A. Furnish and deliver building and maintenance supplies, materials and services in support of the operations and maintenance functions at the University. Facilities Management will be the primary customer but other University departments may purchase from MSC.

B. MSC will provide delivery service to the University as required. The primary delivery locations for Facilities Management are: (1) Facilities Management Materials Division warehouse, 575 Alderman Rd., Charlottesville, VA, (2) Old Hospital Loading Dock, Jefferson Park Ave., Charlottesville, VA, and (3) Main Heating Plant, Jefferson Park Ave., Charlottesville, VA. The University guarantees no specific amount of business period.

C. MSC will expeditiously deliver a wide range of materials and will demonstrate a commitment to:
   1. Maintain a readily available inventory of required materials.
   2. Expedite delivery of materials to specified delivery locations.
   3. Provide technical, administrative, and field support services as needed to assist the University.
   4. Minimize or eliminate inventory stock outages.
5. Provide emergency service to include weekends and holidays, if necessary.

6. Provide a cooperative, prompt resolution of any problems encountered during the term of this Agreement.

7. Participate in an on-going evaluation process with the University’s contract administrators involved in contract performance.

D. The University reserves the right to independently solicit large volume orders on a case-by-case basis.

E. MSC will be cognizant that the Facilities Management regular working hours are from 7:00 a.m. to 3:30 p.m., and the University’s working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, except established holidays observed by the University.

F. Fees

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<tr>
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</tbody>
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G. Invoicing

MSC will submit one original invoice referencing the correct purchase order number or limited purchase order number to the University’s Accounts Payable Department at this address:

University of Virginia
Accounts Payable
P. O. Box 400197
Charlottesville, Virginia 22904-4197

Or

University Of Virginia
Facilities Management
Account Operations
P. O. 400726
Charlottesville, Virginia 22904-4726

H. Contract Administrator

The individual named below will serve as the Contract Administrator and will be the point of contact at the University for day-to-day operations under this Agreement. The Contract Administrator cannot approve amendments or price changes to this Agreement. MSC will channel all communications through:

John Gerdin
Major Procurements Manager
Procurement Services
University of Virginia
P. O. Box 400202
1001 N. Emmet St
Charlottesville, Virginia 22904
434-982-2563
434-982-5077 (fax)

MSC will not make any commitments or comments, or actions on behalf of the University without the explicit direction of the Contract Administrator. The University reserves the right to change its Contract Administrator, upon notice to MSC.
ACCEPTANCE

For the Rector and Visitors of the University of Virginia

[Signature]
Eric N. Denby
Director of Procurement Services
11/26/07
Date

For MSC Industrial Supply Co, Inc (MSC)

[Signature]
Marla Ferguson
Branch Manager
11/30/07
Date

RFP# HM020106
Attachment 1
Contractual Provisions

A. **Nondiscrimination**
During the performance of this Agreement, MSC will comply with the contract provisions contained in Section 2.2-4311(1) and (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.

B. **Conflict of Interests**
MSC represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq*) or any other applicable law or regulation.

C. **Assignment**
Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.

D. **Amendments**
No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement Services and by the individual signing MSC's proposal or by other individuals named by either party as specified in Section E, Notices below. If MSC deviates from the terms of this Agreement without a written amendment, it does so at its own risk.
E. Notices
Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt; or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:
Eric N. Denby
Director of Procurement Services
University of Virginia
Carruthers Hall
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Fax: (434) 924-6154

If to MSC:
Marla Fergerson
Branch Manager
MSC Industrial Supply Co, Inc
7425 White Pine Rd
Richmond, VA 23237
Fax: (804) 714-2431

F. Independent Contractor
MSC is not an employee of the University, but is engaged as an independent contractor. MSC will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to MSC's performance of this Agreement. Nothing in this Agreement will be construed as authority for MSC to make commitments which will bind the University, or to otherwise
act on behalf of the University, except as the University may expressly authorize in writing.

G. **Workers' Compensation and Employers' Liability**
MSC will (i) maintain Employers Liability coverage of at least $100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. **Drug-Free Workplace**
MSC, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, MSC agrees to 1) provide a drug-free workplace for MSC's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in MSC's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of MSC that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a MSC, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.
1. **Information Technology Access Act**

In accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

**NON-VISUAL ACCESS TO TECHNOLOGY:** All information technology (the "Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of the Agreement:

- Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- Technology equipped for non-visual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- Technology for non-visual access will have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement Services, University of Virginia determines that 1) the Technology is not available with non-visual access because the essential elements of the Technology are visual and 2) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.
If requested, the Agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

J. eVA Business To Government Registration
The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, is the Commonwealth of Virginia’s comprehensive electronic procurement system. The portal is the gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA. All firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. MSC is required to register in the eVA Internet e-procurement solution prior to an award being made.

K. eVA Transaction Fee
MSC agrees that it is a registered eVA vendor and subject to an eVA transaction fee, for which MSC will be invoiced by Commonwealth of Virginia, Department of General Services. Additional information is available at www.eva.state.va.us.

L. Contractor License Requirements
State statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. If firms provide removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of the Agreement. It is the firm’s responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies.

License # ___________________ Type ___________________
A copy of the license must be furnished upon request to the University or VASCUPP member institution.
M. Goods and Services
During the term of this Agreement, MSC will provide for the University the goods and services offered to the University in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected the firm.

N. Waiver
No waiver of any right hereunder will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right hereunder will prevent a later exercise of such or any other right.

O. Indemnification
The University will be responsible as provided by the laws of Virginia for the acts or omissions of its agents and employees causing harm to persons not a party to this Agreement. MSC agrees that it will be responsible for the acts or omissions of its agents and employees causing harm to persons not a party to this Agreement. Nothing in this Agreement is intended or will be construed as a waiver of the sovereign immunity of the Commonwealth.

P. Governing Law
This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

Q. Termination
If MSC fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency, to the University's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to MSC.
R. **Non-Appropriation**

Funding for any Agreement between the University and a MSC is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University effective the last day for which appropriated funding is available.

S. **Right of Audit**

The University reserves the right to audit or cause to be audited MSC’s books and accounts regarding the University’s account at any time during the term of this Agreement and for five years thereafter. MSC will make available to the University all books and records relating to performance of this Agreement as may be requested during said period.

T. **Contractual Claims**

This Agreement is subject to the University’s policy on Contractual Claims which is provided as Attachment 2: *Procedure for Resolution of Contractual Claims*.

U. **Insurance**

Listed below is the insurance MSC must maintain as part of this Agreement. In event will MSC construe these minimum required limits to be their limit of liability to the University.

**Comprehensive Commercial General Liability:**
MSC and any Subcontractor will maintain, at a minimum combined single Limit of Liability for bodily injury and property damage of $500,000 per person/occurrence, with coverage for premises operations.

**Automobile Insurance:**
MSC and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of $500,000 per accident on all owned, hired, and non-owned vehicles operated by their employees.
V. Use of Agreement by Third Parties

In accordance with Section 2.2-4304 of the Code of Virginia, these organizations may have access to this Agreement to allow for cooperative purchasing by only the Virginia Association of State College and University Purchasing Professionals (VASCUPP) and all other Commonwealth of Virginia public institutions of higher education (to include four-year, two-year and community colleges). Current VASCUPP member institutions include: College of William and Mary, George Mason University, James Madison University, Old Dominion University, Radford University, University of Virginia, Virginia Commonwealth University, Virginia Military Institute, and Virginia Polytechnic Institute and State University. A list of all other Virginia Public Colleges and Universities is available at https://www.ExploreVirginiaColleges.com.

In addition, access to the Agreement may also be extended to 1) Any University related foundation, and 2) City of Charlottesville and County of Albemarle. Potentially, other member schools of the Atlantic Coast Conference (ACC) may also have access to this Agreement if such access is confirmed by the University. The other ACC member schools which may potentially participate are: Boston College, Clemson University; Duke University; Florida State University; Georgia Institute of Technology, North Carolina State University; University of Maryland, University of Miami, University of North Carolina; Wake Forest University, and Wake Forest University Health Sciences. Other institutions which may participate include Emory University.

Participation in this cooperative procurement is strictly voluntary. If authorized by MSC, the Agreement will be extended to the public bodies indicated above to purchase at the fees in accordance with the terms of the Agreement. MSC will notify the University in writing of any such institutions accessing the Agreement. No modification of the Agreement or execution of a separate agreement is required to participate. MSC will provide semi-annual usage reports for all VASCUPP member institutions and public institutions accessing the Agreement. Participating public bodies will place their own orders directly with MSC and will fully and independently administer use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. The University will not be held liable for any costs
or damages incurred by any other participating public body as a result of any authorization by MSC to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any VASCUPP member institution, or of any other entity accessing the Agreement under this section, and will not be considered in default of the Agreement no matter the circumstances.

Use of this Agreement does not preclude any participating public body from using other agreements or competitive procurement processes as required by law.

W. **The University's Authorized Representatives**
The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to MSC by the University's Director of Procurement Services.

X. **Purchasing Manual**
This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available on Procurement Service's web site at:
http://www.virginia.edu/procurement/about/PurchasingManual.html

Y. **Small, Disadvantaged, Women-owned and Minority (SWAM) Business Reporting**
MSC will identify and fairly consider small, disadvantaged, woman-owned or minority firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under this Agreement. MSC will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. MSC will submit the quarterly SWAM business reports to:

Nancy Noblet
Administrative Assistant to the Director of Procurement Services
E-mail: mm9pg@virginia.edu

The quarterly SWAM business reports will contain this information:
• SWAM firms' name, address and phone number with which MSC has contracted over the specified quarterly period.
• Contact person at the SWAM firm who has knowledge of the specified information.
• Type of goods and/or services provided over the specified period of time.
• Total amount paid to the SWAM firm as it relates to the University's account.

Z. e-procurement Clause

MSC agrees to provide and maintain an electronic catalog in the University's Electronic Marketplace (the "Marketplace"). Catalogs can be hosted in the Marketplace or a punch-out from the Marketplace to MSC web site. The University requires the following from its catalog vendors.

Punch-out Catalog MSC will:
• Notify the University's Contract Administrator of pricing and product changes prior to making a change.
• Clearly notate shipping terms, return policy and cancellation policy in the punch-out catalog.
• Provide training or help details in the punch-out catalog.
• Allow customization of the punch-out catalog with the University's marks, logos and/or necessary language.
• Agree that to the extent the terms and conditions of the Agreement are in conflict with those in the punch-out catalog, the Agreement will take precedence.
• Provide an error message as connectivity interruptions arise.
• Have a privacy policy that complies or is similar to the Platform for Privacy Preferences Project (P3P) standards.

MSC will:
• Ensure that the Catalog data is maintained, updated and accurate.
• Invoice at catalog prices or lower and accept payment of catalog price if there is a discrepancy.
• Negotiate freight terms for Marketplace purchases.

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• Agree to develop and maintain a delivery performance standard and provide annual reports on such performance.
• Register in eVA and maintain its registered status for the term of the resulting Agreement. Additionally, maintain the necessary number of eVA sites for orders to be placed from the Marketplace.
• If necessary will maintain and update accurate ship to addresses in its system.
• Provide reports as required by the University to update and maintain its catalog in the system. Such reports may include: sales by item, price and quantity sold per time, percentage increase in sales, average lead time, percentage of on-time deliveries, and delivery errors.
• Support a manual process for change orders.
• Encourage University users to utilize the UVA Marketplace for placing orders.

The University reserves the right to remove MSC's catalog from its Marketplace, renegotiate discounts and/or fees and payment of site license fees at anytime during the term of the Agreement.
Attachment 2

Procedure for Resolution of Contractual Claims

The Virginia Acts of Assembly of 2006, Chapter 943, Chapter 3, Exhibit P and its attachments requires contractors with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the contractors' intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

A. MSC must provide the written claim to:
   Assistant Director of Procurement Services
   University of Virginia
   1001 North Emmet Street
   P. O. Box 400202
   Charlottesville, Virginia 22904-4202

B. Although MSC may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section A above, MSC must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement Services if it wishes to pursue its claim.

C. Upon receiving the written claim, the Assistant Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with MSC. If such discussion is to be held, the Assistant Director of Procurement Services will contact MSC and arrange such discussion. The manner of conducting such discussion will be as the Assistant Director and MSC mutually agree.

D. The Assistant Director of Procurement Services will mail his or her decision to MSC within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

E. MSC may appeal the decision to:
   Director of Procurement Services
   University of Virginia
Carruthers Hall  
1001 North Emmet Street  
P.O. Box 400202  
Charlottesville, Virginia  22904-4202

by providing a written statement explaining the basis of the appeal, within 15 days after MSC's receipt of the decision.

F. Upon receiving the written appeal, the Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with MSC. If such discussion is to be held, the Director of Procurement Services will contact MSC and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement Services and MSC mutually agree.

G. The Director of Procurement Services will mail his or her decision to MSC within 60 days after the Director of Procurement Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.