



District School Board of Pasco County

20430 Gator Lane • Land O' Lakes, Florida 34638 • 813/ 794-2221

Heather Fiorentino, Superintendent


www.pasco.k12.fl.us

Department of Purchasing
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May 3, 2011

MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPO, CPPB, Purchasing Agent 

SUBJECT: Direct Negotiated Contract: Apple, Inc.
Computer Hardware, Software and Services

On February 15, 2011, official action (attached) was taken to allow Purchasing and Information Services to directly negotiate a new agreement with Apple for computer hardware, software and services. Under DOE Rule 6A-1.012(14), the District is permitted to negotiate for high-technology purchases, should we choose to do so.

The final negotiated contract is attached for your approval at this time. The initial term of the contract will be July 1, 2011 – June 30, 2012, renewable for two (2) additional one (1)-year terms at the mutual agreement of the parties. The Purchasing Department is requesting blanket approval to purchase Apple computer products on an as-needed basis not to exceed \$2 million for the 2011-2012 fiscal year. As spending on all computer products has been significantly curtailed, this amount is half the dollar amount approved for the 2010-2011 fiscal year. Per its standard procedure, Purchasing will monitor all Apple purchase orders to ensure the blanket threshold is not exceeded.

We are requesting Board approval of the attached contract documents and approval of the blanket dollar amount as noted above. Should you have any questions regarding this matter, please feel free to contact me at your earliest convenience.

KDG/az
Attachments

Date/Time: April 27, 2011 08:49:00



Education/State & Local Government Purchase Agreement

This Education/State & Local Government Purchase Agreement is made between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Institution Legal Name ("Purchaser"): _____

Institution DBA (if different from Legal Name): _____

Address: _____

City, ST, Zip: _____

1. Definitions

A. "Agreement" means, collectively, this Education/State & Local Government Purchase Agreement, any addenda or amendments hereto that reference this Education Purchase Agreement and that are mutually executed by the parties, and any terms that are incorporated herein by specific reference, excluding the terms of any purchase orders.

B. "Apple Products" means hardware and software products manufactured, distributed or licensed ("sold") under the Apple Inc. brand name, that Purchaser has paid to acquire (or license) from Apple for its own use but excluding any Apple-branded software that Apple distributes free-of-charge, third party-branded hardware components, third party-branded component technology, third party open source software or freeware and all other third party-branded products. Apple Product consisting of software is referred to as "Apple Software".

C. "Limited Warranty" means and is limited to Apple's standard limited warranty that is set forth in the documentation that accompanies an Apple Product purchased under this Agreement.

D. "Products" means Services and hardware and software products, including Apple Products, that may be sold by Apple to Purchaser for Purchaser's own use.

E. "Services" mean, collectively, the standard, price-listed service, support and/or training products sold under the Apple Inc. brand name that Purchaser has paid to acquire.

2. Purchases from Apple

A. Limited Billing Service Account. Apple will provide Purchaser a limited billing service account to use when placing service orders such as Customer Installable Parts (CIPs) and mail-in or on-site repairs. Purchaser may be asked to submit a purchase order when placing a service order. Purchaser acknowledges that Apple does not provide service CIP or repair pricing on an Apple price list; Apple will quote current pricing to Purchaser prior to processing any purchase order, and Purchaser will have the option to either accept or decline the quoted prices. In the event Purchaser accepts the quoted pricing, Apple will process the purchase order under the terms of this Agreement; should Purchaser decline the quoted prices, Apple will not process the purchase order.

B. Price. Prices shall be as set forth on the applicable Apple price list in effect on the date Purchaser's order is accepted by Apple. Apple reserves the right to accept or decline any order, in whole or in part. Apple may cancel any accepted order prior to shipment. Unless Purchaser notifies Apple otherwise, Apple may make partial shipments of Purchaser's orders. Apple will not be liable for any failure to ship complete orders. Purchaser will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Purchaser. Prices include standard freight and insurance using an Apple-selected carrier, applicable local sales or use taxes.

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duties and other imposts, if any, due on account of purchases hereunder shall be paid by Purchaser. Proof of tax exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction.

C. Delivery. Title and risk of loss to all Products will pass to Purchaser upon shipment from Apple's shipping location. For Products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal quarter during the term of this Agreement, Apple will issue credits or replace Products returned due to damage in transit or that are lost in transit. For Products shipped pursuant to Apple's standard practices in the last week of every Apple fiscal quarter during the term of the Agreement, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Apple will provide third-party insurance for damaged or lost Products with Purchaser named as the loss payee. When not shipping Products pursuant to Apple's standard practices but instead shipping via a carrier selected by Purchaser, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Shipping charges for orders that are shipped under Purchaser's instructions will be added to Apple's invoice, or shipped freight collect, at Apple's option.

D. Payment. Purchaser shall be invoiced upon shipment of Products and, provided Purchaser is qualified for credit with Apple, payment of such invoice will be due no later than thirty (30) days from date of invoice. Apple will also charge for any fees due from Purchaser by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar statutes in other states. Apple reserves the right to change the Authorized Apple Price Lists and Purchaser's credit terms at any time. In addition to Apple's other rights in this Agreement, Apple reserves the right, without liability or obligation to Purchaser, to suspend deliveries in the event of a payment default.

3. Limited Warranty

A. The sole warranty for Apple Product, if any, purchased under this Agreement shall be the Limited Warranty. Except for the Limited Warranty, all Apple Products are sold "as is" and without additional warranty or support from Apple.

B. All Products, other than Apple Product, are sold "as is" and without warranty or support from Apple, but may be accompanied by a manufacturer's warranty, as more particularly provided in any warranty documentation that accompanies such Products. Upon Purchaser's request, Apple will provide a copy of any manufacturer's warranty accompanying Products offered by Apple under this Agreement. Nothing in this Agreement shall be construed as obligating Apple to provide any warranty-related fulfillment or support for any Products, other than Apple Products.

C. EXCEPT FOR THE LIMITED WARRANTY, APPLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES AND APPLE HEREBY DISCLAIMS SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4. Proprietary Rights. Purchaser, as an end user, is licensed to use any software contained in the Products, subject to the terms of the license accompanying the Products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States. Unless Purchaser has obtained Apple's prior written consent, Purchaser, in addition to any obligations or restrictions set forth in any license that may accompany a Product, shall not copy the software, except to back up or for archival purposes, and Purchaser shall promptly affix to any such copy the same proprietary and copyrights notices as were affixed to the original. Purchaser shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof, or otherwise change any of the software or its form, or permit any persons to do any of the foregoing.

5. Right of Defense.

A. Subject to the exceptions set forth below and Purchaser's compliance with

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[Signature]



the notice and defense conditions in Section 5.B below, Apple will defend any proceeding or action brought by a third party against Purchaser to the extent based on a claim that: (1) an Apple Product sold by Apple that Purchaser has paid to acquire infringes a U.S. patent, copyright, trademark or trade secret; or (2) personal injury or tangible property damage suffered by such third party was caused by Apple's gross negligence or willful misconduct during the course of Apple's performance of Services. Notwithstanding anything to the contrary, Apple is not liable for any claims or damages arising out of or related to: (a) any modification of any Apple Product(s), (b) any combination, operation or use of any Apple Product(s) with non-Apple branded Products or other non-Apple-provided programs, data or documentation, (c) Purchaser's violation of any import or export control requirements, regulations, and laws, (d) Purchaser's use or exportation of any Apple Product(s) into any countries identified on any U.S. Government embargoed countries list, (e) use of any Apple Software in a manner not authorized under the applicable Apple end user license agreement (the "EULA"), or (f) Purchaser's, its employees or subcontractors' negligence, acts or omissions. Subject to the foregoing exceptions, Apple's obligation to defend Purchaser against claims covered by 5.A(1) or 5.A(2) above is contingent on Purchaser's compliance with Section 5.B below. THE FOREGOING CONSTITUTES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND APPLE'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

B. Notice and Defense Conditions. Purchaser shall promptly notify Apple, in writing, of any claim, demand, proceeding or suit of which Purchaser becomes aware which may give rise to a right of defense pursuant to this section 5 ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within thirty (30) days of Purchaser's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Apple to completely and

finally resolve the Claim by settlement or compromise. Upon Apple's acceptance of tender, Purchaser will cooperate with Apple with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, both parties will not publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

C. In the event of any actual or potential Claim, Apple will be entitled (but not obligated), at its sole option, to: (1) procure for Purchaser the right to continue use of the applicable Apple Product(s), (2) replace the applicable Apple Product(s), (3) modify the applicable Apple Product(s), or (4) refund the amount paid by Purchaser to Apple for the applicable Apple Product, less depreciation.

6. Limitation of Liabilities and Remedies. Notwithstanding anything to the contrary, except to the extent prohibited by applicable law, the maximum aggregate liability of Apple for any and all claims and damages arising out of or related to this Agreement, whether arising in contract, warranty, tort, strict liability, statute or otherwise, shall be limited to three hundred thousand U.S. dollars (\$300,000). IN NO EVENT SHALL APPLE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES, WHETHER AS A RESULT OR BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any and all claims against Apple, its agents and subcontractors in connection with or related to this Agreement. The parties further agree that the liability cap set forth herein shall not be applied cumulatively or on a per claim basis and nothing shall be construed so as to enlarge that aggregate limit. THE PARTIES AGREE THAT THE ABOVE TERMS REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD ENTERED INTO THE AGREEMENT.

7. Term and Termination

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A. Term; Termination. Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the date Apple signs it until the following March 31; and unless either party provides written notice of non-renewal to the other party not less than thirty (30) days before the expiration of any then-current term, this Agreement shall automatically renew for additional one (1) year periods. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice. Either party may terminate this Agreement upon thirty (30) days prior written notice if the other party is in material breach of this Agreement and has failed to cure such breach within thirty (30) days of the date of such notice.

B. Effect of Termination. The parties agree that upon any notice of termination of this Agreement: (i) the due date of all Apple invoices shall be accelerated so that they become immediately due and payable; (ii) Apple may refuse all or part of any purchase orders received by Apple pursuant to this Agreement after the date of notice of termination; and (iii) Purchaser will cease placing new orders.

C. Survival. All defined terms and the following provisions shall survive any termination of this Agreement: Sections 1, 2.D, 3-4, 5.C, 6, 7.B, 7.C and 8.

8. General

A. Governing Law. If Purchaser is a public institution or agency, this Agreement will be governed and interpreted under the laws of the state in which Purchaser is located. If Purchaser is a private institution, this Agreement will be governed and interpreted under the laws of the State of California, without regard to its conflict of laws provisions (in the event that litigation commences, the parties agree that the venue shall be Santa Clara County, California).

B. Severability. If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Agreement.

C. Waivers. A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or a different kind.

D. Export Compliance. This Agreement is subject to all laws, regulations, order or other limitations on the export and re-export of commodities, technical data and software. Purchaser agrees that it will not export, re-export, resell or transfer any export controlled commodity, technical data or software (1) in violation of such limitations imposed by the United States or any other appropriate nation government authority, or (2) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals, at Purchaser's sole cost and expense.

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E. Entire Agreement; Modifications. This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties concerning the subject matter. This Agreement contains all of Apple's and Purchaser's agreements, warranties, understandings, conditions, covenants, and representations concerning the subject matter. In the event of any conflict or inconsistency between the terms of this Agreement and any EULA, the terms of the EULA shall control solely as to the Apple Software covered by that EULA. Neither Apple nor Purchaser will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Any different or additional provisions in purchase orders, invoices or similar documents issued by Purchaser at any time are hereby deemed refused by Apple and such refused provisions will be unenforceable. Except as otherwise provided in this Agreement, no modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

F. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original but such counterparts together shall constitute one and the same instrument.

G. Force Majeure. Neither party shall be liable for any delay or failure to meet its obligations (except for Purchaser's payment obligations) under this Agreement due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, epidemics, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm. Notwithstanding, this provision shall not be construed to relieve Purchaser of its obligations to make payments to Apple pursuant to this Agreement.

H. Authority. Purchaser represents and warrants that it has all right, power and authority under applicable law to enter into and perform this Agreement and that the person signing below has the requisite legal authority to bind Purchaser to the terms of this Agreement.

The duly authorized representatives of the parties execute this Agreement as of the Effective Date.

Purchaser

Apple Inc.

SIGNATURE:

SIGNATURE:

PRINT NAME:

PRINT NAME:

TITLE:

TITLE:

DATE:

DEPT: Sales Contracts
Management

EFFECTIVE DATE:

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AND APPROVED:
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Addendum to the Education/State & Local Government Purchase Agreement

This Addendum to the Education/State & Local Government Purchase Agreement ("Addendum") modifies the Education/State & Local Government Purchase Agreement ("Agreement") between Apple Inc., a California corporation located at 1 Infinite Loop, CA 95014 ("Apple") and:

Institution Legal Name ("Purchaser") _____

Institution DBA (if different from Legal Name) _____

Address: _____

City, ST, Zip: _____

This Addendum further amends the Agreement as follows:

1. **Section 2.D, Payment.** The first sentence of this section is amended by replacing "thirty (30) days" with "forty-five (45) days".

2. **Section 7.A, Term; Termination.** This section is stricken in its entirety and replaced with the following:

Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the date Apple signs it until June 30, 2012; and unless either party provides written notice of non-renewal to the other party not less than thirty (30) days before the expiration of any then-current term, this Agreement shall be renewed upon the parties' mutual, written consent for additional one (1) year periods not to exceed three (3) years. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice. Either party may terminate this Agreement upon thirty (30) days prior written notice if the other party is in material breach of this Agreement and has failed to cure such breach within thirty (30) days of the date of such notice.

3. The following additional provisions are added to the Agreement:

A. Apple will evaluate educational discount pricing on a quarterly basis for the custom store.

B. During the term of the Agreement, Apple will provide Purchaser with an on-line Apple store. This site shall be kept current with Purchaser's discounted pricing information, if applicable.

C. Purchaser reserves the right to negotiate with Apple for greater discounts based on large volume orders or sales promotions.

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- D. Apple agrees to meet with Purchaser's designated representatives on at least a quarterly basis to review technology upgrades and other information which may be beneficial to Purchaser.
4. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

The duly authorized representatives of the parties execute this Addendum as of the dates set forth below.

Purchaser

Apple Inc.

SIGNATURE:

SIGNATURE:

PRINT NAME:

PRINT NAME:

TITLE:

TITLE:

EFFECTIVE DATE:

DEPT: Sales Contracts Management

DATE:





District School Board of Pasco County

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Heather Florentino, Superintendent

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February 15, 2011

MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPO, CPPB, Purchasing Agent *KDG*

SUBJECT: Permission to Directly Negotiate Contract: Apple Inc. Computer Hardware, Software and Services

On June 15, 2010, official action (attached) was taken to approve the third-year of a direct negotiated contract with Apple Inc. (Apple) for computer hardware, software and services. The term of that contract will expire on June 30, 2011.

The Information Services Department is requesting Purchasing Department assistance in negotiating a new, three (3)- year agreement for the term July 1, 2011 – June 30, 2014; the contract will be renewable annually at the mutual agreement of the parties. Please see the attached memo from Mr. Ed Mutell, Supervisor of Information Services, for further detail.

Under DOE rule 6A-1.012(14), the District is permitted to negotiate for high-technology purchases, should we choose to do so. We anticipate beginning negotiations immediately upon Board approval. Once concluded, the results of the negotiations, and permission to proceed with high-technology purchases under the agreement, will be brought back to the Board for final approval.

If you have any questions or concerns, please feel free to contact Ed Mutell or me at your earliest convenience.

KDG/az
Attachment

District School Board
of Pasco County

FEB 15 2011