

**AMENDMENT NO. 1  
TO THE GOODS PURCHASE AGREEMENT  
BETWEEN THE  
CITY OF SAN BERNARDINO  
AND  
INGRAM LIBRARY SERVICES**

This Amendment (“Amendment”) is made and entered into this 1st day of July 2022, (“Effective Date”) by and between the City of San Bernardino (“City”) and Ingram Library Service LLC, a Tennessee corporation, with its principal place of business at One Ingram Blvd., La Verge, Tennessee 37086-1986 (“Supplier”). City and Supplier are sometimes individually referred to as “Party” and collectively as “Parties.”

**RECITALS**

WHEREAS, City and Supplier entered into a Goods Purchase Agreement on September 21, 2021 setting forth the terms and conditions under which Supplier would provide library goods, (i.e. books) for the City (“Agreement”); and

WHEREAS, City and Consultant desire to amend the Agreement to modify the price of the contract set forth in Section 4.C.

**TERMS**

1. Section 4.C. Section 4.C. of the Agreement is hereby amended to read as follows:

“C. In no event shall the total amount paid for Goods provided by Supplier under this Agreement exceed the sum of Eighty-Five Thousand Dollars (\$85,000) per fiscal year. Not to exceed Eighty-Five Thousand Dollars (\$85,000) for Fiscal Year 2022-2023. No warranty is given or implied as to the total amount of Goods that may be purchased by the City during the term of the Agreement. Agreement is subject to the City Council approval of the City Manager’s proposed budget.”

2. Section 7.C. Section 7.C. is added to the Agreement to read as follows:

“C. Freight Terms. Freight Terms:

Shipments of 20 or more units from the City’s primary distribution center or from the City’s secondary distribution center qualify for free freight. Shipments of less than 20 units will be charged a flat \$6.00 shipping fee. This flat fee amount or qualifying unit quantity is subject to change with prior written notice. Items picked, packed, and shipped together count as an individual shipment. Supplier does not currently assess any additional fees for shipping. However, given the unpredictable impact of rising oil prices, Supplier reserves the right to assess a fuel surcharge with prior written notice.

Due to the impact of rising oil prices, Supplier has instituted a \$2.50 fuel surcharge. This charge is subject to change with notice. These charges will appear as a Shipping and Handling charge on the City's invoice."

3. Section 9. A - C. Section 9. A – C. of the Agreement is hereby amended to read as follows:

"A. Supplier agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state, or local taxing authority on the ultimate purchase price of the Goods provided under this Agreement. City agrees to pay Supplier any sales, use, business activity, VAT, GST, and/or similar type taxes ("**Indirect Taxes**") that Supplier is required to charge and collect and/or are imposed due to products and/or services rendered provided under this Agreement

B. Supplier will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Supplier will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Goods provided hereunder, will be the responsibility of Supplier other than the "Indirect Taxes" in Section A which City agrees to pay Supplier as required. Supplier will timely report and remit such Indirect Taxes to the appropriate taxing authority. In addition, all taxes assessed by any taxing jurisdiction based on Supplier property used or consumed in the provision of the Goods such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Supplier."

4. Section 9.D. Section 9.D. of the Agreement is hereby deleted in its entirety.

5. Section 14.A.6. Section 14.A.6. of the Agreement is amended to read as follows:

"Privacy/Network Security (Cyber Liability), of at least \$1,000,000 per claim and aggregate for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and (4) the introduction, implantation or spread of malicious software code, in a form and with insurance companies acceptable to the City."

6. Execution of Amendment. In accordance with Section 18.D. of the Agreement, this Amendment shall only be effective upon the execution by City and Supplier.

7. Entire Agreement. This Amendment represents the entire understanding of the City and the Supplier as to those matters contained in this Amendment, and supersedes and cancels any prior oral or written understanding, promises or representatives with respect to those matters covered in this Amendment, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

8. Full Force and Effect. Except as amended by this Amendment, all other provisions of the Agreement remain in full force and effect. From and after the date of this Amendment,

whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

- 9. Severability. If any provision of this Amendment shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment unless elimination of such provision materially alters the rights and obligations set forth herein.
- 10. Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

**CITY OF SAN BERNARDINO**

**INGRAM LIBRARY SERVICES LLC**

**APPROVED BY:**

*Edward R. Erjavek*  
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 Ed Erjavek  
 Library Director

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 Signature

**ATTESTED BY:**

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 Genoveva Rocha  
 City Clerk

\_\_\_\_\_  
 Pamela Smith  
 Name  
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 VP & GM ILS  
 Title

**APPROVED AS TO FORM:**

DocuSigned by:  
  
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 Best Best & Krieger LLP  
 City Attorney