

## **MASTER PURCHASE AGREEMENT**

This Master Purchase Agreement dated as of January 6, 2003 is by and between the County of Allegheny ("County") and Zep Manufacturing Company, a division of Acuity Specialty Products Group, Inc. ("Supplier").

### **RECITALS**

WHEREAS, the Supplier is in the business of selling certain products and related services, as further described herein; and

WHEREAS, the Supplier desires to sell and the County desires to purchase certain products and related services all upon and subject to the terms and conditions set forth herein.

NOW, THEREFORE, Supplier and County, intending to be legally bound, hereby agree as follows:

### **ARTICLE 1 - CERTAIN DEFINITIONS**

1.1 "Agreement" shall mean this Purchase Agreement, including the main body of this Agreement, Attachment A, Attachment B, Attachment C, Attachment D and all other attachments and exhibits attached hereto. "Agreement" shall also include Allegheny County Request for Proposal RFP No. 5217 (herein "RFP"), all subsequent Bulletins issued in connection with the RFP and provided to Supplier, and Supplier's proposal dated June 5, 2002 submitted in response to the RFP (herein "Supplier's Proposal") as referenced and incorporated herein as though fully set forth (sometimes referred to collectively as the "Contract Documents").

1.2 "Applicable Law(s)" shall mean all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, orders and other governmental requirements of any kind, including, but not limited to, those relating to (i) affirmative action and equal employment opportunity, (ii) nondiscrimination based on race, color, creed, religion, sex, age, ethnic origin or existence of a disability, (iii) wages and hours, (iv) workers' compensation and unemployment insurance, (v) labor and employment conditions, (vi) occupational safety and health and (vii) the environment and the use and handling and disposal of toxic and/or hazardous substances and materials.

1.3 "Employee Taxes" shall mean all taxes, assessments, charges and other amounts whatsoever payable in respect of, and measured by the wages of, the Supplier's employees (or subcontractors), as required by the Federal Social Security Act and all amendments thereto and/or any other applicable federal, state or local law.

1.4 "County's Destination" shall mean such delivery location(s) or destination(s) as County may prescribe from time to time.

1.5 “Products” shall mean the products and related services to be sold by Supplier hereunder as identified and described on Attachment A hereto and incorporated herein, as may be updated from time to time by Supplier in its discretion to reflect products and related services offered by Supplier generally to its customers.

1.6 “Purchase Order” shall mean any authorized written, electronic, telephone or fax order sent or made by County pursuant hereto, including, but not limited to, written purchase orders, requisitions sent by fax machine, and orders in such other form and/or mode of transmission as County and Supplier may from time to time agree. Each Purchase Order will specify the following items: specific Products requested (by id number), unit price per Product, quantity, delivery schedule, destination (with contact/recipient), and total price of the Purchase Order. Each Purchase Order issued under this Agreement shall be made part of, and be incorporated into this Agreement, and shall reference this Agreement on the face of each Purchase Order. Should any Purchase Order not conform to or satisfy the terms of this Agreement, Supplier shall have five (5) business days after receipt to reject the Purchase Order. By not rejecting the Purchase Order within five (5) business days, Supplier will have accepted the Purchase Order. Acceptance by Supplier is limited to the provisions of this Agreement and the Purchase Order. No additional or different provisions proposed by Supplier or County shall apply. In addition, the parties agree that this Agreement and accepted Purchase Orders constitute a contract for the sale of goods and/or services and satisfy all statutory and legal formalities of a contract.

1.7 “Unemployment Insurance” shall mean the contribution required of Supplier, as an employer, in respect of, and measured by, the wages of its employees (or subcontractors) as required by any applicable federal, state or local unemployment insurance law or regulation.

## **ARTICLE 2 - AGREEMENT TO SELL**

2.1 Supplier hereby agrees to sell to County, as County may from time to time designate, such Products as County may order by Purchase Order, all in accordance with and subject to the terms, covenants and conditions of this Agreement. County agrees to purchase those Products ordered by County by Purchase Order in accordance with and subject to the terms, covenants and conditions of this Agreement.

2.2 All Purchase Orders issued by County to Supplier for Products during the Term (as hereinafter defined) of this Agreement are subject to the provisions of this Agreement as though fully set forth in such Purchase Order. In the event that the provisions of this Agreement conflict with any Purchase Order issued by County to Supplier, the provisions of this Agreement shall govern. No other terms and conditions, including, but not limited to, those contained in Supplier's standard printed terms and conditions, on Supplier's order acknowledgment, invoices or otherwise, shall have any application to or effect upon or be deemed to constitute an amendment to or to be incorporated into this Agreement, any Purchase Order, or any transactions occurring pursuant hereto or thereto, unless this Agreement shall be specifically amended to adopt such other terms and conditions in writing by the parties.

2.3 Notwithstanding any other provision of this Agreement to the contrary, County shall have no obligation to order or purchase any Products hereunder and the placement of any Purchase Order shall be in the sole discretion of County. Without limiting the generality of the

foregoing, the actual quantity of Products to be purchased hereunder shall be determined by County in its sole discretion. This Agreement is not exclusive. Supplier expressly acknowledges and agrees that County may purchase at its sole discretion, products which are identical or similar to the Products described in this Agreement from any third party.

2.4 In case of any conflict or inconsistency between any of the Contract Documents or between any Contract Document and this Agreement, the documents shall prevail and apply in the following order of priority:

- (i) this Agreement;
- (ii) Supplier's Proposal; and
- (iii) the RFP.

2.5 Supplier agrees to extend the same terms, covenants and conditions available to County under this Agreement to other government agencies that, in their discretion, desire to access this Agreement in accordance with Attachment C which is attached hereto and incorporated herein by reference ("Participating Public Agencies"). Each Participating Public Agency will be exclusively responsible for and deal directly with Supplier on matters relating to ordering, delivery, inspection, acceptance, invoicing, and payment for Products in accordance with the terms and conditions of this Agreement as if it were "County" hereunder. Any disputes between a Participating Public Agency and Supplier will be resolved directly between them under and in accordance with the laws of the State in which the Participating Public Agency exists.

### **ARTICLE 3 - TERM AND TERMINATION**

3.1 The term of this Agreement shall commence on the date hereof and shall continue for three (3) years, expiring on Jan. 06, 2006 (the "Original Term"), subject to any earlier termination as provided herein. Notwithstanding the foregoing, County may extend the term of this Agreement for two (2) additional periods of one (1) year each (each, an "Extension Term") by giving Supplier written notice no less than thirty (30) days prior to the expiration of the Original Term or preceding Extension Term. (The Original Term together with all Extension Terms is hereafter referred to as the "Term.")

3.2 Notwithstanding anything to the contrary contained in this Agreement, County may terminate this Agreement at any time with or without cause by providing to Supplier no less than thirty (30) days' prior written notice of termination.

3.3 Either party may terminate this Agreement by written notice to the other party if the other party breaches any of its obligations hereunder and fails to remedy the breach within sixty (60) days after receiving written notice of such breach from the non-breaching party.

### **ARTICLE 4 - PRICING, INVOICES AND PAYMENT**

4.1 County shall pay Supplier for all Products ordered and delivered in compliance with the terms and conditions of this Agreement on the terms and at the price or prices specified for each such Product on Attachment A attached hereto and made a part hereof. Unless Attachment A expressly provides otherwise, the prices for Products set forth on Attachment A hereto shall remain fixed during the entire Term of this Agreement and shall not be increased as a result of the quantity of Products ordered, the delivery time within which such Products are required to be delivered to County or for any other reason. Unless otherwise directed by County for expedited orders, Supplier shall utilize such common carrier for the delivery of Products as Supplier may select; provided, however, that for expedited orders Supplier shall obtain delivery services hereunder at rates and terms not less favorable than those paid by Supplier for its own account or for the account of any other similarly situated customer of Supplier.

4.2 Supplier shall submit original invoices to County in form and substance and format reasonably acceptable to County. All invoices must reference the County's Purchase Order number, contain an itemization of amounts for Products purchased during the applicable invoice period and any other information reasonably requested by County, and must otherwise comply with the provisions of this Agreement and such reasonable requirements as may be prescribed by County from time to time. Invoices shall be addressed as directed by County.

4.3 The prices specified on Attachment A include (i) all taxes and duties of any kind which Supplier is required to pay with respect to the sale of Products covered by this Agreement and (ii) all charges for packing, packaging and loading.

4.4 Notwithstanding any other agreement of the parties as to the payment of shipping/delivery costs, except as otherwise provided on Attachment A, all purchases hereunder shall be F.O.B. County's Destination. Supplier shall bear all risk of loss during transit.

4.5 Except as specifically set forth on Attachment A hereto, County shall not be responsible for any additional costs or expenses of any nature incurred by Supplier in connection with the provision of the Products, including without limitation travel expenses, clerical or administrative personnel, long distance telephone charges, etc. ("Incidental Expenses"). To the extent that Attachment A expressly requires County to reimburse Supplier for Incidental Expenses, and notwithstanding anything else set forth in this Agreement, including Attachment A hereto, County shall not be responsible for any such reimbursement unless the expenses to be reimbursed are (i) approved, in each instance, in advance by County; and (ii) substantiated by appropriate receipts and related documentation. It is acknowledged and agreed that County may, as a condition of its approval of any such Incidental Expense reimbursement, require in each instance Supplier to utilize suppliers or service providers prescribed by County, which may include suppliers or service providers which are affiliated with County.

4.6 Supplier represents, warrants and covenants that the prices, charges and fees for Products set forth in this Agreement (on the whole) are at least as favorable as the prices, charges and fees Supplier charges (on the whole) to other of its customers or clients for the same or substantially similar products provided under the same or substantially similar circumstances, terms, and conditions. If Supplier agrees or contracts with other clients or customers similarly situated during the Term of this Agreement, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), Supplier hereby agrees that it will reduce the

prices, charges and/or fees charged to County in respect of the Products hereunder to the most favorable rates received by those other clients or customers.

#### **ARTICLE 5 - INSURANCE**

During the term of this Agreement, Supplier shall maintain at its own cost and expense (and shall cause any subcontractor to maintain) insurance policies providing insurance of the kind and in the amounts generally carried by reasonably prudent manufacturers in the industry, with one or more insurance companies reasonably acceptable to County and licensed to do business in the states where Products are to be sold hereunder.

#### **ARTICLE 6 - INDEMNIFICATION**

In lieu of anything else contained in this Agreement or Contract Documents to the contrary, Supplier agrees that it shall indemnify, defend and hold harmless County and its respective officials, directors, employees and agents (collectively, the "Indemnities"), from and against any and all damages, claims, losses, expenses, costs, obligations and liabilities (including without limitation reasonable attorney's fees), suffered directly or indirectly by any of the Indemnities by reason of, or arising out of, (i) any breach of any covenant, representation or warranty made by Supplier in this Agreement, (ii) any failure by Supplier to perform or fulfill any of its obligations, covenants or agreements set forth in this Agreement, (iii) the negligence or intentional misconduct of Supplier, any subcontractor of Supplier, or any of their respective employees or agents, (iv) any failure of Supplier, its subcontractors, or their respective employees to comply with any Applicable Law, (v) any litigation, proceeding or claim by any third party relating in any way to the obligations of Supplier under this Agreement or Supplier's performance under this Agreement, (vi) any Employee Taxes or Unemployment Insurance, or (vii) any claim alleging that the Products or any part thereof infringe any third party's U.S. patent, copyright, trademark, trade secret or other intellectual property interest. Such obligation to indemnify shall not apply where the damage, claim, loss, expense, cost, obligation or liability is due to the breach of this Agreement by, or negligence or willful misconduct of, County or its officials, directors, employees, agents or contractors. The provisions of this Article shall survive the expiration or termination of this Agreement.

#### **ARTICLE 7 - WARRANTIES**

Supplier covenants, guaranties and warrants that, provided that the Products are stored in a suitable environment, for a period of 90 days after delivery, all Products (including all replacement Products which Supplier furnishes) (i) shall be new, free from defects in material and workmanship (including damage due to unsatisfactory packaging by Supplier), (ii) shall be in accordance with the Supplier's specifications, (iii) shall comply in all material respects with all Applicable Laws, (iv) shall be merchantable, and (v) shall be suitable for the use intended by Supplier when used in accordance with Supplier's instructions and Material Safety Data Sheets. Supplier further warrants that all Products furnished hereunder will be free of any claim of any nature by any third person and that Supplier will convey clear title to all Products sold hereunder to County. In addition to, and not in limitation of, the foregoing, Supplier makes all of the warranties, guarantees and representations set forth at Attachment B attached hereto and made a part hereof. All of the warranties and guarantees provided by Supplier herein shall remain in full force and effect and shall not be diminished as a result of any utilization by County of Products

in accordance with their intended use. Any attempt by Supplier to limit, disclaim, or restrict any of the above warranties, or any remedy of County, by acknowledgment or otherwise, in accepting or performing any Purchase Order, shall be null and void and ineffective without County's express written consent.

### **ARTICLE 8 - INSPECTION AND REJECTION**

8.1 County shall have the right to inspect and test Products at any time prior to shipment, and within a reasonable time after delivery to the County's Destination. Products not inspected within a reasonable time after delivery shall be deemed accepted by County. The payment for Products shall in no way impair the right of County to reject nonconforming Products, or to avail itself of any other remedies to which it may be entitled.

8.2 If any of the Products are found at any time to be defective in material or workmanship, damaged, or otherwise not in conformity with the requirements of this Agreement or any applicable Purchase Order, as its exclusive remedy, County may at its option and at Supplier's sole cost and expense, elect either to (i) return any damaged, non-conforming or defective Products to Supplier for correction or replacement, or (ii) require Supplier to inspect the Products and remove or replace damaged, non-conforming or defective Products with conforming Products. If County elects option (ii) in the preceding sentence and Supplier fails promptly to make the necessary inspection, removal and replacement, County, at its option, may inspect and sort the Products and Supplier shall bear the cost thereof. Payment by County of any invoice shall not constitute acceptance of the Products covered by such invoice, and acceptance by County shall not relieve Supplier of its warranties or other obligations under this Agreement.

8.3 The provisions of this Article shall survive the expiration or termination of this Agreement.

### **ARTICLE 9 - SUBSTITUTIONS**

Except as otherwise permitted hereunder, Supplier may not make any substitutions of Products, or any portion thereof, of any kind without the prior written consent of County.

### **ARTICLE 10 - COMPLIANCE WITH LAWS**

10.1 Supplier agrees to comply with all Applicable Laws. Without limitation of the foregoing sentence, Supplier shall comply with all applicable equal employment opportunity, affirmative action, and all other contract clauses required by Applicable Law and shall, at Supplier's expense, secure and maintain in full force during the Term of this Agreement, any and all licenses, permits, approvals, authorizations, registrations and certificates, if any, required by Applicable Laws in connection with the performance of its obligations hereunder. At County's request, Supplier shall provide to County copies of any or all such licenses, permits, approvals, authorizations, registrations and certificates.

10.2 County has taken all required governmental action to authorize its execution of this Agreement and there is no governmental or legal impediment against County's execution of this Agreement or performance of its obligations hereunder.

## **ARTICLE 11 – PUBLICITY / CONFIDENTIALITY**

11.1 No news releases, public announcements, advertising materials, or confirmation of same, concerning any part of this Agreement or any Purchase Order issued hereunder shall be issued or made without the prior written approval of the parties. Neither party shall in any advertising, sales materials or in any other way use any of the names or logos of the other party without the prior written approval of the other party.

11.2 Any knowledge or information which Supplier or any of its affiliates shall have disclosed or may hereafter disclose to County, and which in any way relates to the Products covered by this Agreement shall not, unless otherwise designated by Supplier, be deemed to be confidential or proprietary information, and shall be acquired by County, free from any restrictions, as part of the consideration for this Agreement.

## **ARTICLE 12 - RIGHT TO AUDIT**

Subject to Supplier's reasonable security and confidentiality procedures, County, or any third party retained by County, may at any time upon prior reasonable notice to Supplier, during normal business hours, audit the books, records and accounts of Supplier to the extent that such books, records and accounts pertain to sale of any Products hereunder or otherwise relate to the performance of this Agreement by Supplier. Supplier shall maintain all such books, records and accounts for a period of at least three (3) years after the date of expiration or termination of this Agreement. This Article 12 and County's rights hereunder shall survive the expiration or termination of this Agreement for a period of three (3) years after the date of such expiration or termination and County shall continue to have the right to audit during such period.

## **ARTICLE 13 - DELIVERY REQUIREMENTS**

TIME IS OF THE ESSENCE WITH RESPECT TO EACH PURCHASE ORDER ISSUED HEREUNDER. If Supplier for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements hereunder or under any Purchase Order accepted by Supplier, Supplier shall promptly notify County in writing. Except as otherwise provided in Article 18 below, if Supplier does not comply with the applicable delivery schedule, in addition to any other remedies it may have, County may require delivery by fastest method available and any actual out-of-pocket charges or costs resulting from such method (including, but not limited to, premium shipping rates, etc.), if any, must be fully prepaid and/or absorbed by Supplier without additional cost to County. It is Supplier's responsibility to comply with the delivery schedule applicable to each Purchase Order accepted by Supplier, but not to anticipate County's requirements.

## **ARTICLE 14 - RISK OF LOSS AND PASSAGE OF TITLE**

Supplier shall have the risk of loss of or damage to any Products until passage of title to County. County shall have the risk of loss of or damage to the Products after title has passed to County. Title to Products shall not transfer until the Products have been delivered to County at County's Destination.

## **ARTICLE 15 - REMEDIES**

Except as otherwise provided herein, any right or remedy of Supplier or County set forth in this Agreement shall not be exclusive, and, in addition thereto, Supplier and County shall have all rights and remedies under applicable law, including without limitation, equitable relief. The provisions of this Article shall survive the expiration or termination of this Agreement.

#### **ARTICLE 16 - RELATIONSHIP OF PARTIES**

Supplier is an independent contractor and is not an agent, servant, employee, legal representative, partner or joint venturer of County. Nothing herein shall be deemed or construed as creating a joint venture or partnership between Supplier and County. Neither party has the power or authority to bind or commit the other.

#### **ARTICLE 17 - NOTICES**

All notices required or permitted to be given or made in this Agreement shall be in writing. Such notice(s) shall be deemed to be duly given or made if delivered by hand, by certified or registered mail or by nationally recognized overnight courier to the address specified below:

If to County:

Chief Purchasing Officer  
County of Allegheny  
Division of Purchasing and Supplies  
436 Grant Street  
Room 206 Courthouse  
Pittsburgh, PA 15219

If to Supplier:

1310 Seaboard Industrial Boulevard  
Atlanta, Georgia 30318  
Attn: Brian Shelby, Vice President – National Accounts

with a copy to:

Acuity Brands, Inc.  
1170 Peachtree Street, NE, Suite 2400  
Atlanta, Georgia 30309  
Attn: Kenyon W. Murphy, Senior Vice President and General Counsel

Either party may change its notice address by giving the other party written notice of such change in the manner specified above.

## **ARTICLE 18 - FORCE MAJEURE**

Delay in performance or non-performance of any obligation contained herein shall be excused to the extent such failure or non-performance is caused by force majeure. For purposes of this Agreement, "force majeure" shall mean any cause or agency preventing performance of an obligation which is beyond the reasonable control of either party hereto, including without limitation, fire, flood, sabotage, shipwreck, embargo, strike, explosion, labor trouble, accident, riot, acts of governmental authority (including, without limitation, acts based on laws or regulations now in existence as well as those enacted in the future), acts of God, and delays or failure in obtaining raw materials, supplies or transportation. A party affected by force majeure shall promptly provide notice to the other, explaining the nature and expected duration thereof, and shall act diligently to remedy the interruption or delay if it is reasonably capable of being remedied. In the event of a force majeure situation, deliveries or acceptance of deliveries that have been suspended shall not be required to be made up on the resumption of performance.

## **ARTICLE 19 - WAIVER**

No delay or failure by either party to exercise any right, remedy or power herein shall impair such party's right to exercise such right, remedy or power or be construed to be a waiver of any default or an acquiescence therein; and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. No waiver hereunder shall be valid unless set forth in writing executed by the waiving party and then only to the extent expressly set forth in such writing.

## **ARTICLE 20 - PARTIES BOUND; ASSIGNMENT**

This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but it may not be assigned in whole or in part by Supplier without the prior written consent of County which shall not be unreasonably withheld or delayed. Supplier shall not delegate its duties under this Agreement nor assign monies due or to become due to it hereunder without prior written consent of County. County may freely assign this Agreement to an instrumentality thereof or to a third party responsible for administering this Agreement on behalf of County.

## **ARTICLE 21 - SEVERABILITY**

To the extent possible, each provision of this Agreement and any Purchase Order shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement or any Purchase Order issued in accordance with this Agreement is declared invalid or unenforceable, by judicial determination or otherwise, such provision shall not invalidate or render unenforceable the entire Agreement or Purchase Order, but rather the entire Agreement or Purchase Order shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the parties shall be construed and enforced accordingly.

## **ARTICLE 22 - INCORPORATION; ENTIRE AGREEMENT**

22.1 All the provisions of the Attachments hereto are hereby incorporated herein and made a part of this Agreement. In the event of any apparent conflict between any provision set forth in the main body of this Agreement and any provision set forth in Attachment A, B, C or D, the provisions shall be interpreted, to the extent possible, as if they do not conflict. In the event that such an interpretation is not possible, the provisions set forth in the main body of this Agreement shall control.

22.2 This Agreement (including Attachments hereto) constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes any and all prior written and oral agreements or understandings relating to such subject matter.

## **ARTICLE 23 - HEADINGS**

Headings used in this Agreement are for convenience of reference only and shall in no way be used to construe or limit the provisions set forth in this Agreement.

## **ARTICLE 24 - MODIFICATIONS**

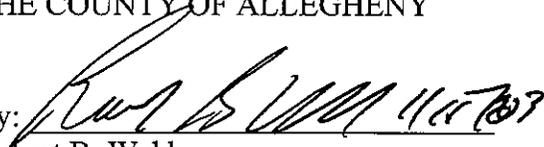
This Agreement may be modified or amended only by a writing executed by both parties hereto.

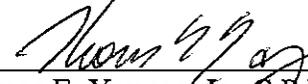
## **ARTICLE 25 - GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the state in which the County exists, without regard to its choice of law provisions.

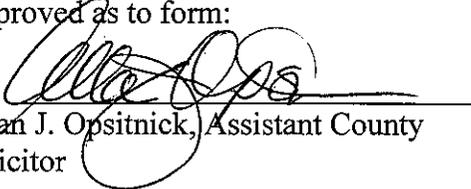
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

THE COUNTY OF ALLEGHENY

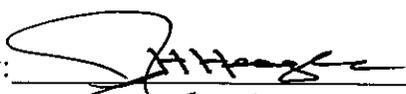
By:   
Robert B. Webb  
County Manager

By:   
Thomas E. Youngs, Jr., C.P.M.  
Chief Purchasing Officer

Approved as to form:

By:   
Allan J. Opsitnick, Assistant County  
Solicitor

ZEP MANUFACTURING COMPANY,  
a division of Acuity Specialty Products  
Group, Inc.

By:   
Name Jim Heagle  
Title President + CEO

**ATTACHMENT A**  
**to Purchase Agreement dated as of January 06, 2003 by and**  
**between SUPPLIER, and COUNTY.**

**PRODUCTS, SERVICES, SPECIFICATIONS AND PRICES**

Products: See Attachment A-1 hereto for Core Products. See Supplier's Full Line catalog for all other Products. Products that are not available for sale or restricted for sale in certain jurisdictions may be substituted with comparable Products in Supplier's discretion.

Specifications: See Supplier's Material Safety Data Sheets for the Products (or written specifications for non-chemical Products), to be provided by Supplier to County.

Prices and Price Increases:

- (a) Core Products: Prices for Core Products are set forth in Attachment A-1 hereto. Notwithstanding anything contained in the Agreement or Contract Documents to the contrary, Supplier may increase the unit prices for the Core Products annually, effective July 1 of each calendar year, based on increases in Supplier's costs of performing hereunder (as supported by appropriate documentation from Supplier), not to exceed an average annual increase of five percent (5%) in the aggregate, provided that Supplier gives ninety (90) days' prior written notice of any such proposed increase to County and County does not reject such increase in writing to Supplier. If County rejects any such increase for a Core Product, Supplier may, in its discretion, delete such Core Product from Attachment A.
- (b) Other Full Line Products: Prices for all other Products that are not Core Products ("Full Line Products") are equal to Supplier's list price for such Products, which notwithstanding anything contained in the Agreement or the Contract Documents to the contrary Supplier may adjust from time to time in its discretion, as set forth in Supplier's then-current price list, less 38% thereof for chemical Products or 25% thereof for non-chemical Products, exclusive in each case of promotional or introductory Products.

Payment Terms: Net 30 days from date of invoice.

Additional Charges: County will pay a \$20.00 delivery fee for each order under \$100.00; County will pay Supplier's actual costs and expenses, including incremental shipping charges but excluding labor, paid to third parties for each expedited order that County requests; County will pay all shipping and handling expenses for Products delivered in accordance with the Agreement and returned through no fault of Supplier.

Additional Terms Relating to the Products:

- (a) Supplier will develop, subject to County's reasonable review and approval, a custom catalog of Core Products, to be available for use by all authorized County ordering personnel through the internet or otherwise. The first such catalog will be

developed within 60 days of the beginning of the Agreement and available for use by authorized County ordering personnel within 90 days of the beginning of the Agreement and subsequent catalogs will be developed within the first 30 days of each subsequent calendar year during the term of this Agreement.

(b) Supplier's representatives will be trained to work closely with County in attempting to direct purchases toward the Core Product Catalog and away from similar and/or more expensive items in Supplier's Full Line Catalog. Supplier's technical service representatives will also be trained to make recommendations that are environmentally appropriate, if available.

(c) Supplier will also provide a Full Line Catalog containing products offered generally to Supplier's customers.

(d) Any additional terms relating specifically and/or uniquely to the provision of Products to the County of Allegheny will be set forth in a separate mutually agreeable Rider to the Agreement, signed by authorized representatives of the parties.

**ATTACHMENT B**  
**to Purchase Agreement dated as of January 06, 2003 by and**  
**between SUPPLIER, and COUNTY.**

**ADDITIONAL SELLER WARRANTIES**

To the extent possible, Supplier will make available all warranties from third party manufacturers of Products not manufactured by Supplier.

THE WARRANTIES SET FORTH IN ARTICLE 7 OF THE AGREEMENT AND ABOVE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE FULLEST EXTENT PERMITTED BY LAW.

**ATTACHMENT C**  
**to Purchase Agreement dated as of January 06, 2003 by and**  
**between SUPPLIER , and COUNTY .**

**Participating Public Agencies**

County served as the Lead Public Agency in cooperation with U.S. Communities and on behalf of other government agencies that desire to access the Master Purchase Agreement. Supplier must deal directly with any Participating Public Agency concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing, and payment. The County is acting as "Contracting Agent" for the Participating Public Agencies and shall not be held liable for any costs, damages, etc. incurred by any other Participating Public Agency.

The subsequent contract shall be construed to be in accordance with and governed by the laws of the State in which the Participating Public Agency exists. Each Participating Public Agency is required to register with U.S. Communities and as part of the registration process enter into a Master Intergovernmental Cooperative Purchasing Agreement (MICPA), all as set forth on U.S. Communities website, [www.uscommunities.org](http://www.uscommunities.org), under "Register to Participate" tab. The MICPA allows the Participating Public Agency to purchase products from the Supplier in accordance with each Participating Public Agency's legal requirements.

**ATTACHMENT D**  
**to Purchase Agreement dated as of January 06, 2003 by and**  
**between SUPPLIER, and COUNTY.**

**Participating Public Agency Rebates**

In addition to the pricing discounts set forth in the Master Purchase Agreement, Supplier agrees to pay to the County and other Participating Public Agencies rebates contingent upon achieving the annual volumes or incentive thresholds set forth below:

A. Volume Rebates

<u>Purchases*</u>	<u>% of Purchase Rebate</u>
\$500,000 <\$1,000,000	1%
\$1,000,000 <\$1,500,000	2%
\$1,500,000 <\$2,000,000	3%
\$2,000,000 or more	4%

All volume rebates are to be determined on a calendar year basis during the term of this Master Purchase Contract and are payable within 60 days of the end of each calendar year.

B. Program Rebates

County and other Participating Public Agencies will be eligible to participate in various rebate incentive programs offered by Supplier from time to time and to receive aggregate rebates up to a maximum of 2% of County's or the Participating Public Agency's (as applicable) annual purchases. The initial rebate incentive program to be offered by Supplier is as follows:

1. 2% rebate on all purchases\* between January 1, 2003 and June 30, 2003
2. Any rebates under the foregoing initial rebate program will be payable by August 31, 2003.

\*All purchases are net of returns and freight charges and must be paid within terms to be eligible.