



Agenda Item #:



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Cohen and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Bruce Moe, Finance Director  
Gwen Eng, General Services Manager

**DATE:** September 1, 2009

**SUBJECT:** Consideration of Award of a Three-Year Printing Services Contract to Standard Register Company (Estimated Total Annual Value of \$76,525)

### RECOMMENDATION:

Staff recommends that the City Council award RFP #768-09 to Standard Register Company for a three-year contract to provide City-wide printing services with an estimated annual value of \$76,525.

### FISCAL IMPLICATION:

Sufficient funds are budgeted in each department for on-going printing services.

### DISCUSSION:

The City began contracting with an outside firm for our printing needs in 1993 after closing the City's print shop. In the past, the City contracted with a single firm to provide diverse types of printing services, such as copying, offset and digital printing. The various using departments generate print jobs on an on-going basis.

#### *Bid Recaps*

Staff solicited proposals and received four responses. Because we cannot pre-determine each and every print job that may be requested during the contract period, staff solicited bid prices for various materials and services, which were then applied to a sampling of the most commonly used printing services from recent history. The results below indicate what the total cost would have been for those sample jobs using each contractor's pricing:

<u>Bidder</u>	<u>Representative Bid Total</u>
1. Standard Register Co.	\$10,850
2. Avalon Communications	\$11,434
3. Studio Printing	\$11,595
4. Ready Reproductions	\$11,801

Based upon those sample jobs, Standard Register is the lowest bidder for our printing needs.

Where possible and practical, we have specified “green” requirements in keeping with our efforts to be more environmentally-friendly. We specified that, at a minimum, all jobs be printed with vegetable based ink on recycled paper with 30% post consumer waste (PCW) content. Staff explored raising the recycled content to 50% PCW; however, this would result in an additional 24% up-charge. Staff determined that 30% PCW paper balances going “green” and cost.

The award selection is based upon several factors: ability to perform the requirements, pricing, quality control, references, and timely responsiveness. Standard Register has the necessary staffing, equipment, and facilities to meet the City’s requirements, and is also the lowest bidder. In addition, Standard Register was the only vendor that offered workflow technology. Their proprietary ordering system, SMARTworks®, allows city staff access to multiple online features including a digital document repository so that documents can be ordered on a recurring basis, and dynamic price calculation which lets users make informed decisions on printing and finishing choices based on cost. The end result is an improved procedure for order placement, fewer trips made by the vendor, decreased need for inventory, greater control over print spending, and reduced print job turnaround time.

The estimated spend level is based on year-to-date expenditures and covers on-contract items as well as miscellaneous off-contract items not identified through the City’s bid process. Staff recommends that Council authorize the City Manager to execute a contract purchase order as well as the required software agreement<sup>1</sup> (approved as to form by the City Attorney). The City may cancel the contract at any time without cause if necessary.

Attachment: Contract with Standard Register Company

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<sup>1</sup> The agreement is required because the City will be utilizing proprietary software for ordering documents and print jobs on-line.

## SMARTWORKS LICENSE AND SERVICES AGREEMENT

This SMARTWORKS LICENSE AND SERVICES AGREEMENT ("Agreement") dated as of June 8, 2009 (the "Effective Date") is between THE STANDARD REGISTER COMPANY, an Ohio corporation ("Standard"), 600 Albany Street, Dayton, Ohio 45408-1442, and CITY OF MANHATTAN BEACH, a California municipality, on its own behalf and on behalf of its Affiliates ("Client"). Standard and Client shall sometimes be referred to individually, as a "Party" and collectively, as the "Parties" in this Agreement.

### PRELIMINARY STATEMENT

The Parties desire to enter into this Agreement pursuant to which Standard will provide to Client and its Affiliates the license and services, that will assist Client to effectively design, order and manage the printed business forms which Client orders from Standard.

NOW, THEREFORE, in consideration of the mutual promises and covenants as contained in this Agreement, the Parties hereby agree as follows:

1. **DEFINITIONS.** In addition to the defined terms as otherwise contained in this Agreement including, but not limited to, the defined terms as contained in the Schedules to this Agreement, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number, the plural, and in the plural, the singular:

(a) "**Additional Services**" shall mean individually or collectively, as appropriate, the Services which are described in the Schedules which are attached to this Agreement and which Client elects to order from Standard after the Effective Date of this Agreement.

(b) "**Affiliate**" means any corporation, limited liability company, partnership or other entity that, directly or indirectly, owns, is owned by, or is under common ownership with, a Party hereto for as long as such ownership exists. For the purposes of the foregoing, "own" in its various forms means ownership of more than fifty percent (50%) of the stock or other equity interests entitled to vote for the election of directors or an equivalent governing body.

(c) "**Approved Users**" means a Person who has been assigned a username and password by Standard with Client's authorization in order to gain access to and use the Web Site.

(d) "**Business Day**" means any day on which Standard is open for business in Dayton, Ohio.

(e) "**Client Electronic Data**" means any electronic information that is owned by Client and that Client has furnished to Standard pursuant to this Agreement or any Order Information.

(f) "**Services**" shall mean individually or collectively, as appropriate, the services as described in the Schedules to this Agreement which Client has ordered as of the Effective Date of this Agreement and which will be performed by Standard to assist Client in effectively managing its documents.

(g) "**Services Fees**" shall mean individually or collectively, as appropriate, the fees for the Services as contained in the Schedules to this Agreement.

(h) "**Confidential Information**" means (i) all information clearly identified in writing by a Party at the time of disclosure as confidential, (ii) all information disclosed orally that either is identified as confidential or that a reasonable Person at the time of disclosure would assume, under the circumstances, to be confidential including, but not limited to, any trade secrets, developments, systems, inventions, software, firmware, formulas, devices, know-how, customer lists, pricing strategies, development plans and product information that derives independent value from not being generally known to the public or the other Persons who could obtain economic value from its disclosure and (iii) the Schedules to this Agreement and the contents of the Web Site which are Copyright © 2001 SMARTworks. All Rights Reserved.

(i) "**Disclosing Party**" means a Party that has disclosed Confidential Information to the other Party.

(j) "Electronic Data" means collectively, the Client Electronic Data and SMARTworks Electronic Data.

(k) "Electronic Files" means any electronic files developed or created by Standard with any Client Electronic Data or SMARTworks Electronic Data.

(l) "Order Information" means any information regarding Products that Client has ordered through the Web Site.

(m) "Organization" means a corporation, limited liability company, partnership, government or government subdivision or agency, business trust, estate, trust and any other legal or commercial entity.

(n) "Person" means an individual or Organization.

(o) "Products" means all printed business forms goods which Client orders from Standard by use of the Web Site.

(p) "Receiving Party" means a Party that has received Confidential Information from the other Party.

(q) "SMARTworks Electronic Data" means any electronic information that is created by Standard in connection with its performance of the Client Services.

(r) "SMARTworks Services" means collectively, the services ordered by Client from Standard in connection with the Web Site.

(s) "Third Person" means a Person other than Standard, Client or an Approved User.

(t) "Web Site" means the open e-procurement website which is owned and operated by Standard and which is located at www.SMARTworks.com.

2. SERVICES. Client hereby orders the following Services from Standard by checking the box for each Service that Client desires to order:

- The Client Care Basic Services Package as described and as selected by Client, which shall include the SMARTworks Standard Services as more fully described in the attached Schedule A.

3. ADDITIONAL SERVICES. If Client desires Additional Services after the Effective Date of this Agreement, the Parties shall amend this Agreement in accordance with Section 28.

4. SMARTworks LICENSE. Subject to the terms and conditions contained in this Agreement, Standard hereby grants to Client a non-exclusive, nontransferable, nonsublicensable license (the "SMARTworks License") to have access to the Web Site from its computers via the Internet or Intranet and to use the Electronic Files during the term of this Agreement, for the purpose of (i) entering orders for the purchase of Products, (ii) requesting shipment of Products, (iii) accessing information regarding the historical usage of, and/or current stored inventory information of, the Products, and (iv) such other functions as provided for in this Agreement. The Web Site is a supplier-independent, open web site platform for e-procurement and document management services which is owned and operated by Standard.

5. SMARTworks LICENSE TERMS. The SMARTworks License is subject to the following terms and conditions:

(a) Electronic Data, Electronic Files, Security and Use Restrictions.

(1) Electronic Data.

(i) Client Electronic Data License. Client hereby grants Standard a perpetual, royalty-free, fully paid up, worldwide license to use the Client Electronic Data, (i) to

generate reports and fulfill its duties and obligations hereunder and under any licenses or other agreements that it has with Client or other Persons, or (ii) if required to be disclosed by law or order of a court or government agency (the "Client Electronic Data License").

(ii) Client Electronic Data Limitation. Except as provided in Section 5(a)(1)(i) of this Agreement, Standard shall not disclose to any Third Person any Client Electronic Data entered into the Web Site or otherwise furnished to Standard including, but not limited to, the Order Information. Except as otherwise provided in the Client Electronic Data License, Standard shall not otherwise use, disclose or transfer the Client Electronic Data after the expiration or termination of this Agreement.

(iii) SMARTworks Electronic Data. Standard shall be the exclusive owner of the SMARTworks Electronic Data. Client shall have no right to the possession or use of the SMARTworks Electronic Data except as authorized by this Agreement.

(iv) Loss of Electronic Data. Except for its negligence, Standard shall not be liable to Client for any loss of any Electronic Data.

(2) Electronic Files. Subject to the limitations contained in Section 5(a)(1)(ii) of this Agreement regarding the use of the Client's Electronic Data, Standard shall be the exclusive owner of the Electronic Files. Client shall have no right to the possession or use of the Electronic Files except as authorized by this Agreement. Standard shall not be required to furnish Client with any Electronic Files at the expiration or termination of this Agreement.

(3) Security. Client and its Approved Users shall receive an account ID, username and password to gain access to and use of the Web Site. Client and its Approved Users shall maintain the confidentiality of their usernames and passwords. Client shall be fully responsible for all activities that occur under its and its Approved Users username and password. Client and its Approved Users shall (i) not allow any Third Person to use its account, username or password at any time, and (ii) notify Standard of any actual or suspected unauthorized use of its username or password. STANDARD SHALL NOT BE LIABLE TO CLIENT FOR ANY LOSS OR DAMAGE ARISING FROM ANY UNAUTHORIZED USE OF CLIENT'S OR ITS APPROVED USERS' USERNAME OR PASSWORD.

(4) Use Restrictions. Standard may restrict Client's and its Approved User's access to the Web Site during certain no-business hours.

(b) Additional Client Representations and Duties.

(1) Unlawful or Prohibited Acts. Client and its Approved Users shall not use the Web Site for any purpose that is unlawful or prohibited by law or the terms or conditions contained in this Agreement. Client and its Approved Users shall not (i) reverse engineer, decompile or disassemble any portion of the Web Site or tamper in any way with the operation of the Web Site, or (ii) insert or make use of any type of disabling device including, but not limited to, viruses, worms, Trojan horses, time bombs, cancelbots or any similar device that may impair, damage or interfere with the proper working order of the Web Site.

(2) Additional Client Duties. Client shall have the sole responsibility (i) to maintain all hardware including, but not limited to, operating procedures, audit controls, accuracy and security of input and output data, restart and recovery routines and other procedures which are required in order for Client and its Approved Users to use the Web Site, (ii) to maintain back-up data necessary to replace critical Client data in the event of the loss or damage to such data from any cause, and (iii) to ensure that its personnel are trained in the proper use and operation of the Web Site and that its personnel use the Web Site in accordance with all applicable manuals, documentations and instructions.

(3) Indemnity. Client agrees to hold harmless and indemnify Standard from and against all claims, judgments, expenses, losses, fines, liabilities and attorneys' fees and costs, as incurred, arising from or related in any way to the negligent acts or omissions of Client or its

Approved Users or Third Person accessing or utilizing Client's or its Approved Users' username or password to access, the Web Site to (i) procure Products which (a) infringe the rights of a Third Person including, without limitation, copyrights, trademarks, patents, trade secrets, and rights of privacy and publicity; (b) are libelous, defamatory or slanderous; (c) are obscene or pornographic; (d) are designed to or do harass, threaten, or abuse others; or (e) violate any applicable law, rule, or regulation including, without limitation, the exploitation of images or the likeness of minors, the falsification of prescriptions or the counterfeiting of currency; or (ii) insert any disabling devices including, but not limited to, viruses, worms, Trojan horses, time bombs, cancelbots or any similar device that may impair, damage or interfere with the proper working order of the Web Site.

(4) Links to Third Person Sites. When requested by Client, Standard may add hyperlinks to web sites operated by Third Persons (the "Additional Web Sites") to the Web Site. These hyperlinks are provided for Client's reference only. Standard does not control the Additional Web Sites and shall not be liable for their contents. The inclusion of hyperlinks to the Additional Web Sites does not imply any endorsement of the material on the Additional Web Sites or any association with their operators. Standard shall not be liable for damages or losses caused by any delays, defects or omissions that may exist in the services, information or other content provided in the Additional Web Sites, whether actual, special, consequential or punitive. Standard does not make any guarantees or representations to Client as to, and shall have no liability for, any electronic content delivered to Client by any Third Person including, without limitation, the accuracy, subject matter, quality or timeliness of any electronic content.

6. SERVICES FEES. Client shall pay the Services Fees as set forth in the Schedules to this Agreement for the Services ordered by Client and performed by Standard. Standard shall invoice Client for the Services Fees at the times as provided for in the Schedules to this Agreement for the Services ordered by Client and performed by Standard. Client shall pay Standard its invoices for the Services Fees for the Services by the due date contained in Standard's invoices. If Client does not pay Standard the invoice amount within ten (10) days of its due date, Standard may, at its sole option, charge Client interest upon the unpaid balance due Standard at eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less and/or (ii) suspend the performance of its duties under this Agreement and all Schedules.

7. SERVICES FEES ADJUSTMENT. Standard may adjust the Services Fees upon sixty (60) days' prior written notice to Client.

8. SERVICES WARRANTY. Standard hereby represents and warrants to Client that (i) Standard shall perform, in a prompt, professional and workmanlike manner, all Services ordered by Client, (ii) Standard has the expertise and resources necessary to understand and complete the Services (the "Services Warranty"). As soon as commercially reasonable after notice is provided by Client, Standard shall, at its option, either (i) re-perform any Services, or (ii) refund the Services Fees for any Services that do not conform to the Services Warranty. The Services Warranty shall expire ninety (90) days from the date the Services have been performed by Standard. Standard's warranty obligations under the Services Warranty shall be fulfilled by Standard without additional fees or charges of any kind to Client. This shall be Client's sole and exclusive remedy if the Services do not conform to the Services Warranty.

9. INTELLECTUAL PROPERTY WARRANTIES. Standard hereby represents and warrants to Client that it owns all rights in (or has obtained all rights necessary to license or otherwise furnish to Client) the Services (including software, microcode, and other intellectual property of any sort) provided to Client under this Agreement and the attached Schedules ("Standard's Intellectual Property Warranty"). Client hereby represents and warrants to Standard that it owns all rights in (or has obtained all rights necessary to license or otherwise furnish to Standard) all property furnished by Client to Standard and which Standard uses in connection with performing the Services including, but not limited to, any artwork or files furnished by Client to Standard ("Client's Intellectual Property Warranty").

10. ADDITIONAL INTELLECTUAL PROPERTY COVENANTS. Each Party shall retain all right, title and interest in, and to all of its intellectual property and other proprietary information including, but not limited to, trademarks, copyrights, writings, icons, layouts, original artwork and original practice, including any modifications, enhancements and/or other derivative works of said Party's intellectual property or other proprietary information that may arise as a result of the performance of the Services by Standard under this Agreement and the attached Schedules. All intellectual property and other proprietary information now or hereafter owned by Client and which

Client has furnished Standard in connection with its performance of the Services under this Agreement or the attached Schedules (the "Client Intellectual Property") shall remain Client's exclusive property and may only be used by Standard in the performance of its duties under this Agreement.

11. STANDARD'S PREPARATORY MATERIALS. Except as may otherwise be provided for in the Schedules, Client shall not acquire any ownership interest in or license to use, after the termination of this Agreement, any items or materials that have been developed or created by Standard in performing the Services including, but not limited to, any molds, plates, dies, negatives, electronic files, software templates or software programs ("Standard's Preparatory Materials"). If Standard's Preparatory Materials contain any Client Intellectual Property, Standard shall not use Standard's Preparatory Materials except as expressly necessary to perform the Services for Client. Upon the expiration or termination of this Agreement, Standard shall destroy any of Standard's Preparatory Materials that contain any Client Intellectual Property and certify in writing the date or dates that Standard's Preparatory Materials have been destroyed.

12. INDEMNIFICATION BY STANDARD IN RESPECT TO STANDARD'S INTELLECTUAL PROPERTY WARRANTY. Standard will, at its expense, indemnify, defend and hold harmless Client from any Third-Person claims made against Client alleging that any Service infringes a Third Person's copyright, patent, trademark, trade secret or other intellectual property right enforceable in the United States ("Intellectual Property Claim"). Client shall notify Standard promptly in writing and furnish Standard with such information and assistance as Standard may reasonably request to evaluate the Intellectual Property Claim. Standard shall then, at its own expense and option, either (i) settle the Intellectual Property Claim, or (ii) procure for Client the right to use the alleged infringing Service, or (iii) replace or modify the alleged infringing Service in order to avoid the Intellectual Property Claim, or (iv) remove the alleged infringing Service and refund the prices (including transportation costs) paid by Client to Standard less a reasonable amount for Client's actual usage of the infringing Service, or (v) litigate the Intellectual Property Claim; provided, however, prior to Standard taking any of the foregoing responses, the Parties shall meet to discuss the action or actions which Standard proposes to take in response to the Intellectual Property Claim. If the Parties are unable to agree upon the action or actions to take in response to the Intellectual Property Claim, Client may, at its sole option, elect to terminate, for its convenience and without liability upon ten (10) days' prior written notice to Standard, this Agreement as to any alleged infringing Service. Regardless of Standard's response to the Intellectual Property Claim or Client's election to terminate this Agreement as to any alleged infringing Service, Standard shall remain obligated to defend the Intellectual Property Claim and to pay any final judgments awarded against Standard and/or Client based upon the Intellectual Property Claim. This shall be Standard's entire liability to Client and Client's exclusive remedy in the event an Intellectual Property Claim is asserted against Client.

13. DISCLAIMERS OF WARRANTIES.

(a) SMARTworks Services. Neither the Services Warranty, as contained in this Agreement, nor any other documentation furnished by Standard to Client in connection with any SMARTworks Services ordered by Client, is intended to express or imply any warranty that the Web Site will be uninterrupted, timely or error-free. Client assumes all risks and liabilities for results obtained by the use or implementation of the Web Site, whether such results are used singly or in combination with other hardware, software or products.

(b) Implied Warranties. THE SERVICES WARRANTY CONTAINED IN SECTION 8 OF THIS AGREEMENT IS IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR THE CLIENT SERVICES.

14. CONFIDENTIALITY.

(a) Confidential Information. To the extent permitted by law, the Parties shall take reasonable steps not to disclose, publish, release, transfer or otherwise make available any Confidential Information of the other Party, to any Person other than their respective affiliates, employees and agents without the prior written consent of the other Party or as otherwise authorized by the terms of this Agreement.

(b) Non-Confidential Information. Confidential Information shall not include information which (i) was known by the Receiving Party at the time of disclosure; (ii) is or becomes, through no fault of the Receiving Party, available to the public; (iii) is obtained by the Receiving Party from a Third Person without

breach of any agreement with, or obligation of confidentiality to, the Disclosing Party; (iv) is independently developed by the Receiving Party without use of proprietary information received from the Disclosing Party; (v) is publicly disclosed by the Disclosing Party in writing without restrictions similar to those contained in this Agreement; or (vi) is required by law or a court of a government entity to be disclosed.

(c) Injunctive Relief. The Parties acknowledge that a violation of the confidentiality obligations as contained in this Agreement will cause irreparable loss and harm to the Disclosing Party which cannot be reasonably or adequately compensated by damages in an action at law, and, accordingly, the Disclosing Party will be entitled to injunctive and other equitable relief to enforce the confidentiality obligations contained in this Agreement and to prevent or cure any breach or threatened breach thereof.

15. DIRECT DAMAGES LIMITATION. Standard's aggregate liability to Client for any direct damages, whether based upon contract, tort or any other legal theory resulting from or in any way connected with the performance by Standard of its covenants and agreements under this Agreement and the Schedules attached hereto shall not exceed in the aggregate an amount equal to all Client Services Fees paid by Client to Standard under this Agreement. This direct damages limit of liability shall not apply to the Parties' confidentiality obligations as contained in this Agreement.

16. EXCLUDED DAMAGES. Neither Party shall be liable to the other Party for any special, indirect, incidental, consequential or punitive damages (the "Excluded Damages"), based upon breach of this contract Agreement and the Schedules attached hereto. Neither Party shall be liable to the other Party for the Excluded Damages, whether foreseeable or not, and even if the applicable Party has been advised of the possibility of the Excluded Damages. This Excluded Damages limitation shall not apply to (i) the Parties' confidentiality obligations as contained in this Agreement, or (ii) any indemnification obligations under this Agreement.

17. FORCE MAJEURE. Except for payment obligations, if either Party is prevented, hindered or delayed in the performance or observance of any of its obligations under this Agreement by reason of any circumstance beyond its reasonable control including, but not limited to, fire, flood, earthquake, labor disputes, riots, civil disorders, rebellions or revolutions in any country ("Force Majeure"), that Party will be excused from any further performance or observance of the obligations so affected for as long as such circumstances prevail and that Party continues to use all commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay (including compliance with the Parties' Disaster Recovery Plans). The Party affected by a Force Majeure event will advise the other Party in reasonable detail of the event (including the estimated duration of the event) as promptly as practicable (and in any event within four (4) business hours after occurrence of the event) and keep the other Party reasonably apprised of progress in resolving the event.

18. TERM. This Agreement shall commence as of the Effective Date of this Agreement and shall continue until terminated by either Party in accordance with the provisions contained in Section 19 of this Agreement.

19. TERMINATION.

(a) Convenience Termination. This Agreement may be terminated at any time after the Effective Date without cause by either Party upon sixty (60) days' prior written notice to the other Party.

(b) Bankruptcy. This Agreement will automatically terminate prior to its Termination Date, without notice, if any proceeding under any bankruptcy, reorganization, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction is filed by or against either Party.

(c) Default. Either Party may terminate this Agreement if the other Party (the "Defaulting Party") breaches any of its material duties or obligations under this Agreement and fails to cure such default within the applicable cure period (the "Cure Period"). The Cure Period shall commence upon the date the Defaulting Party receives written notice of such default and shall continue for ten (10) days thereafter for a payment default and sixty (60) days for a non-payment default.

20. POST-TERMINATION OBLIGATIONS. At the expiration, cancellation or termination of this Agreement, the SMARTworks License granted by Standard to Client to use the Web Site shall terminate and Client shall have no further right to use the Web Site, except with Standard's prior written consent.



21. INTEGRATION AND AMENDMENTS. This Agreement shall constitute the entire agreement between the Parties with respect to the Services, and supersedes all prior or simultaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the Parties with respect to the Client Services, whether written or oral. The Schedule(s) attached to this Agreement are hereby incorporated by reference into this Agreement. No sales representative or agent of Standard has authority to obligate Standard to any terms or conditions which are not contained in this Agreement. This Agreement may only be amended in a written amendment which has been signed by the duly authorized representatives of the Parties.

22. PRODUCTS AGREEMENT. The Parties acknowledge and agree that they have entered or will enter into another written agreement or agreements with respect to the Products that Client orders from Standard by use of the Web Site (the "Products Purchase Agreement"). The Products Purchase Agreement shall govern the terms and conditions under which Standard shall sell, store and distribute the Products to Client. This Agreement shall only govern the terms and conditions under which Standard shall render the Services to Client.

23. PUBLICITY. Neither Party will use the other Party's name, trademarks or service marks or refer to the other Party directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or its subject matter to the extent the materials in such media release, announcement or disclosure have not previously been made publicly available without obtaining consent from the other Party for each such use or release. This restriction includes, but is not limited to, any promotional or marketing materials, customer lists or business presentations (but not including any announcement intended solely for internal distribution by a Party or any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of a Party).

24. NOTICES. All consents, written notices, requests, demands, and other communications to be given or delivered under this Agreement and the Schedules will be in writing and will be deemed given: (i) when delivered personally; (ii) on the second Business Day when sent by a nationally recognized overnight courier; and (iii) on the third Business Day after being mailed by certified mail, return receipt requested. All notices to Standard shall be sent to The Standard Register Company at 600 Albany Street, Dayton, Ohio 45408-1442, to the attention of Legal Services. All notices to Client shall be sent to Client at its address as set forth on the signature page to this Agreement. Either Party may, upon written notice to the other Party, change its notice address under this Agreement and the Schedules.

25. ASSIGNMENT. This Agreement and all of its provisions will be binding upon and inure to the benefit of each Party and its successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party without the prior consent of the other Party. Notwithstanding the foregoing, Standard may subcontract the performance of its duties under this Agreement, provided Standard shall remain liable for the performance of any of its duties which it has subcontracted.

26. RELATIONSHIP OF THE PARTIES. Standard, in furnishing Client Services to Client under this Agreement, is acting only as an independent contractor. Except as otherwise provided in this Agreement, Standard does not undertake by this Agreement or otherwise to perform any obligation of Client, whether regulatory or contractual, or to assume any responsibility for Client's business or operations, and Standard has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Standard. In no event will Client be deemed to be an employer or co-employer of any employees of Standard, and this Agreement may not otherwise be construed to create a partnership or joint venture relationship between the Parties.

27. APPROVALS AND SIMILAR ACTIONS. Where agreement, approval, acceptance, consent or similar action by either Party is required by any provision of this Agreement, such action will not be unreasonably delayed or withheld unless otherwise expressly permitted.

28. MODIFICATION; WAIVER. This Agreement may be modified only by a written instrument duly executed by the Parties. No delay or omission by either Party to exercise any right or power under this Agreement will impair such right or power or be construed to be a waiver of the delay or omission. A waiver by either Party of any of the obligations to be performed by the other Party or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other obligation contained in this Agreement.

29. NO THIRD-PARTY BENEFICIARIES. This Agreement is for the benefit of the Parties and is not intended to confer any rights or benefits on any Third Person.

30. SEVERABILITY. Whenever possible, each term of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provisions will be deemed restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law, and, if capable of substantial performance, the remaining provisions of this Agreement will be enforced as if this Agreement were entered into without the invalid provision.

31. GOVERNING LAW. The laws of the State of Ohio will govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

32. LIMITATIONS ON ACTIONS. Neither Party may bring an action, regardless of form, arising out of this Agreement more than four (4) years after the action has arisen.

33. COUNTERPARTS AND SIGNATURES. The Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A facsimile of a signed copy of the Agreement or other copy made by reliable mechanical means may be relied upon as an original.

IN WITNESS WHEREOF, the Parties have executed this Client Services Agreement by their duly authorized officers or representatives as of the Effective Date.

THE STANDARD REGISTER COMPANY,  
an Ohio corporation

CITY OF MANHATTAN BEACH  
Client's Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Kathryn A. Lamme

Name: \_\_\_\_\_

Title: Sr. VP, General Counsel & Secretary

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

1400 Highland Avenue  
Street Address

City of Manhattan Beach, California 90266  
City / State / Zip

APPROVED AS TO FORM:

By   
City Attorney

**SCHEDULE A**  
**CLIENT CARE SERVICES PACKAGE AND PRICES**

<b>SERVICE</b>	<b>BASIC SERVICES PACKAGE</b> Includes SMARTworks Standard Services
Hours of Operation	8 a.m. to 5 p.m.
Order Entry	Performed by Client via SMARTworks
Document Management	Performed by Client via SMARTworks
SMARTworks Functionality	(a) SMARTworks Standard Services detailed in Schedule B-5 (b) EDI/Ariba punch out to SMARTworks Web Site
SMARTworks Training	(a) Functional training (Approximately 4 hours) (b) Online Help (c) Quick Reference Cards (d) Two 1-hour general web sessions (e) Tutorial based learning
SMARTworks Administration	Performed by Client
Phone Support	Client Care's call center will answer basic questions and inquiries
Support Staff	Sales office or Client Care support center
Service Level Agreements	Price quotes: Within 48 hours
<b>PACKAGE FEES:</b>	<input type="checkbox"/> <b>BASIC PACKAGE: \$FEES WAIVED</b> (\$5,000 implementation/\$500 per month subscription fee)

**CHECK  PACKAGE REQUESTED**

## SMARTWORKS SERVICES PACKAGES

<b>SMARTworks STANDARD SERVICES PACKAGE</b>
<b>Order Management Tools:</b> <ul style="list-style-type: none"><li>(a) Quick Entry</li><li>(a) Document Search</li><li>(b) Browse Catalogs</li><li>(c) View Orders</li><li>(d) PowerPrint</li><li>(e) SimplyPrint</li><li>(f) Shopping Cart</li></ul>
<b>Document Management Tools:</b> <ul style="list-style-type: none"><li>(a) Document Specifications</li><li>(b) Catalog Management</li><li>(c) Catalog Print On Demand</li></ul>
<b>Inventory Management Tools:</b> <ul style="list-style-type: none"><li>(a) Manage goods activity</li><li>(b) Reorder notification</li></ul>
<b>Administration:</b> <ul style="list-style-type: none"><li>(a) Password reset</li><li>(b) Group administration</li><li>(c) User administration</li><li>(d) Approver model</li><li>(e) Alerts and preferences</li><li>(f) Manage page content</li><li>(g) QuickLinks</li></ul>
<b>Implementation and Training:</b> <ul style="list-style-type: none"><li>(a) Basic implementation services</li><li>(b) Online Training (Two 1-hour sessions)</li><li>(c) Functional Training (Four 1-hour sessions)</li><li>(d) Tutorial based learning</li></ul>
<b>Report availability:</b> <ul style="list-style-type: none"><li>(a) By Goods<ul style="list-style-type: none"><li>(i) Catalog report</li><li>(ii) Inactive goods</li><li>(iii) Goods status</li></ul></li><li>(b) By Organization<ul style="list-style-type: none"><li>(i) By Ship to location</li><li>(ii) By user and groups</li><li>(iii) By cost center</li></ul></li><li>(c) By Order</li><li>(d) Inventory Activity for Standard-printed Goods<ul style="list-style-type: none"><li>(i) Goods Activity<ul style="list-style-type: none"><li>(1) Backorders</li><li>(2) Daily status</li><li>(3) Low inventory</li><li>(4) Re-order notices</li><li>(5) Re-orders due</li><li>(6) Orders in storage</li><li>(7) Open production Orders</li><li>(8) No usage report</li></ul></li><li>(ii) Usage Analysis<ul style="list-style-type: none"><li>(1) Usage by Good</li><li>(2) Usage by cost center</li></ul></li></ul></li></ul>
<b>Integration Options:</b> <ul style="list-style-type: none"><li>(a) EDI punch-out to Standard systems</li><li>(b) Ariba punch-out to Standard systems</li></ul>