

**SERIAL 05189 RFP ELECTRONIC DATA BASE PRODUCTS AND SERVICES  
(MARICOPA COUNTY LIBRARY DISTRICT BRANCHES ONLY)  
TumbleWeed Press Inc. Contract**

**DATE OF LAST REVISION: May 26, 2016  
2021**

**CONTRACT END DATE: May 31,**

**CONTRACT PERIOD THROUGH MAY 31, ~~2016~~ 2021**

**TO: All Departments**

**FROM: Office of Procurement Services**

**SUBJECT: Contract for ELECTRONIC DATA BASE PRODUCTS AND SERVICES  
(MARICOPA COUNTY LIBRARY DISTRICT BRANCHES ONLY)**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **May 17, 2006 (Eff. 07/01/07)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

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Wes Baysinger, Chief Procurement Officer  
**Office of Procurement Services**

**BW/at**  
Attach

Copy to: **Office of Procurement Services**  
John Werbach, Library District



## CONTRACT PURSUANT TO RFP

This Contract is entered into this 4<sup>th</sup> day of September, 2008 by and between Maricopa County Library District (“District”), a political subdivision of the State of Arizona, and TumbleWeed Press, Inc. (“Contractor”) for the purchase of Electronic Data Base Products and Services.

### 1.0 TERM:

- 1.1 The term of this Contract shall remain in full force and effect through the 31<sup>st</sup> day of May, ~~2016~~ **2021**, so long as Contractor continues to offer the products with substantially the same format and content.
- 1.2 **The District may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of fifteen (15) years. The District shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.** ~~The District may, at its option and with the agreement of the Contractor, extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.~~

### 2.0 PAYMENT:

- 2.1 As consideration for performance of the duties described herein, District shall pay Contractor the sum(s) stated in Exhibit “A.”
- 2.2 Payment shall be made after the District’s receipt of a properly completed invoice. Invoices shall follow the billing instructions contained in the account set-up. The District will establish the account set-up in concert with the Contractor.

### 3.0 DUTIES:

The Contractor shall perform all duties stated in Exhibit “B.”

### 4.0 TERMS & CONDITIONS:

#### 4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, directors, officials, and employees from and against all third-party claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor’s duty to defend, indemnify and hold harmless District, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes in the performance of this

Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of District.

4.2 **WARRANTY AND INDEMNIFICATION – COPYRIGHT:**

Contractor warrants and represents that it has the full right, power and authority to enter into this Contract and to grant the rights granted herein; that it has not previously exclusively licensed the interactive multimedia rights to the Material to any third party; and that District's inclusion and use of the Material as permitted in the Contract and Contractor's Licensing/Use Agreement (as negotiated) will not violate any rights of any kind or nature whatsoever of any third party. Contractor shall indemnify and hold harmless District, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fee), arising out of or in any way connected with any breach of any representation or warranty made by Contractor herein.

4.3 **WARRANTY AND INDEMNIFICATION – USE OF INTERNET:**

Contractor shall indemnify and hold District harmless from and against any third-party claims, liabilities, damages and expenses, including, without limitation, reasonable attorney's fees relating to or arising out of Contractor's breach of any of its material obligations under this Contract. Contractor shall not be liable for any third party claims based upon or arising from District's negligent operation of the System or for any indirect, incidental or consequential damages arising from the use of or inability to use the System attributable to District's negligence, provided that Contractor is not also negligent.

4.4 **PROCUREMENT CARD ORDERING CAPABILITY:**

It is the intent of District to pay via purchase order or through use of a MasterCard Procurement Card as best meets the needs of the Library District.

4.5 **NOTICES:**

All notices given pursuant to the terms of this Contract shall be addressed to:

For District:

Maricopa County  
**Office of Procurement Services**  
Attn: Chief Procurement Officer  
320 West Lincoln Street  
Phoenix, Arizona 85003

For Contractor:

TumbleWeed Press, Inc.  
Attn: Rachela Naccarato  
1853A Avenue Road #4  
Toronto, Ontario M5M 3Z4  
Telephone: 416.781.4010  
Facsimile: 416.781.2764  
Email: rachela@tumblebooks.com

**4.6 REQUIREMENTS CONTRACT:**

- 4.6.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when District identifies a need and issues a purchase order or a written notice to proceed.
- 4.6.2 District reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the District agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The District will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.
- 4.6.3 Contractor agrees to accept oral cancellation of purchase orders. Contractor shall reserve the right to confirm any such cancellation with written acknowledgement back to District.

**4.7 PRICE ADJUSTMENTS:**

Requests for reasonable price adjustments, if any, must be submitted sixty (60) days prior to the Contract anniversary date, beginning after Year Two of the Contract. Requests for adjustment in cost of service-related labor, copyright, licensing and/or materials must be supported by appropriate documentation. If District agrees to the adjusted price terms, District shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey.

**4.8 TERMINATION FOR CONVENIENCE:**

The District reserves the right to terminate the Contract in whole or in part at any time, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

**4.9 TERMINATION FOR DEFAULT:**

- 4.9.1 In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 4.9.2 Upon termination, the Contractor shall refund, to District, any fees paid Contractor up to the point of termination.
- 4.9.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**4.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. §38-511 the District may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the District may recoup any fee or commission paid or due to any person

significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of the Contract.

4.11 OFFSET FOR DAMAGES:

In addition to all other remedies at law or equity, the District may offset from any money due to the Contractor any amounts Contractor owes to the District for damages resulting from breach or deficiencies in performance under this contract.

4.12 ADDITIONS/DELETIONS OF SERVICE:

The District reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the District.

4.13 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the District, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Contract Serial Number and identify the job project.

4.14 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.15 ACCESS TO AND RETENTION OF RECORDS FOR THE PURPOSE OF AUDIT AND/OR OTHER REVIEW:

4.15.1 **In accordance with section MCI 371 of the Maricopa County Procurement Code the Contractor agrees to retain all books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is latest. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.**

4.15.2 **If the Contractor's books, records , accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.**

4.15.3 **If at any time it is determined by the County that a cost for which payment has been made is a disallowed cost, the County shall notify the Contractor in writing of the disallowance. The course of action to address the disallowance shall be at sole discretion of the County, and may include either an adjustment to future claim submitted by the Contractor by the amount of the disallowance, or to require reimbursement forthwith of the disallowed amount by the Contractor by issuing a check payable to Maricopa County.**

4.16 ALTERNATIVE DISPUTE RESOLUTION:

4.16.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts.

If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.16.1.1 Render a decision;

4.16.1.2 Notify the parties that the exhibits are available for retrieval; and

4.16.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.16.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.16.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.17 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.18 RIGHTS IN DATA:

The District shall have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder. Upon expiration or termination of this Contract, District will not retain any rights to the database(s) included in this Contract.

4.19 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.20 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

4.21 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

**4.22 PUBLIC RECORDS:**

All Offers submitted and opened are public records and must be retained by the Records Manager at the Office of Procurement Services. Offers shall be open to public inspection after Contract award and execution, except for such Offers deemed to be confidential by the Office of Procurement Services. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential, the specific information and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The Records Manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code.

**4.23 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

4.23.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

4.23.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

4.23.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

4.23.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4.23.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

4.23.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contract.

4.23.3 The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

**4.24 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:**

4.24.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the

employee's employment or at least three years, whichever is longer. I-9 forms are available for download at USCIS.GOV.

- 4.24.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 1.15 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract and may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

4.25 INFLUENCE

As prescribed in MC1-1202 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for Disbarment or Suspension under MC1-902.

An attempt to influence includes, but is not limited to:

- 4.25.1 A Person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type valuable contribution or subsidy,
- 4.25.2 That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a Person attempts to influence any employee or agent of Maricopa County, the Chief Procurement Officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

4.26 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE)

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County. If you do not want to grant such access to a member of \$AVE, please so state in your proposal. In the absence of a statement to the contrary, the County will assume that you do wish to grant access to any contract that may result from this Request for Proposal.

4.27 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's)

County currently holds ICPA's with numerous governmental entities throughout the State of Arizona. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. Please indicate on Attachment A, your acceptance or rejection regarding such participation of other governmental entities. Your response will not be considered as an evaluation factor in awarding a contract.

4.28 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

- 4.23.1 Exhibit A, Pricing.
- 4.23.2 Exhibit B, Scope of Work

**IN WITNESS WHEREOF**, this Contract is executed on the date set forth above.

**CONTRACTOR**

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
DATE

**MARICOPA COUNTY**

\_\_\_\_\_  
DIRECTOR, MATERIALS MANAGEMENT

\_\_\_\_\_  
DATE

**APPROVED AS TO FORM:**

\_\_\_\_\_  
DEPUTY MARICOPA COUNTY ATTORNEY

\_\_\_\_\_  
DATE

**EXHIBIT A**

**PRICING**

SERIAL 05189-RFP  
 PRICING SHEET: NIGP CODE 95635  
 CONTRACTOR'S NAME: TUMBLEWEED PRESS, INC.  
 COUNTY VENDOR NUMBER : \_\_\_\_\_  
 ADDRESS: 1853A AVENUE ROAD #4  
TORONTO, ONTARIO M5M 3Z4  
 P.O. ADDRESS: N/A  
 TELEPHONE NUMBER: 416.781.4010  
 FACSIMILE NUMBER: 416.781.2764  
 WEB SITE: www.tumblebooks.com  
 CONTACT (REPRESENTATIVE): RACHELA NACCARATO  
 REPRESENTATIVE'S E-MAIL ADDRESS: rachela@tumblebooks.com

THERE WILL NOT BE ANY M/WBE PARTICIPATION.

CONTRACTOR WILL ACCEPT PROCUREMENT CARD, BUT NO REBATE FOR USE.

CONTRACTOR HAS INTERNET CAPABILITY.

OTHER GOVERNMENT ENTITIES DO NOT HAVE ACCESS TO THIS CONTRACT.

CONTRACTOR'S PROMPT PAYMENT TERMS ARE NET 30 DAYS.

**1.0 MARICOPA COUNTY ONLY**

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Cost</u>	
1.1	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

**2.0 STATEWIDE (INCLUDING MARICOPA COUNTYT)**

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Cost</u>	
2.1	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

**3.0 MARICOPA COUNTY LIBRARY DISTRICT BRANCHES ONLY**

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON POPULATION</u>		<u>% OFF LIST</u>
	<u>List Price *</u>	<u>Cost *</u>	
<b>3.1 TumbleBooks</b>			
<b>3.1.1</b> 1 Branch	\$399.00	\$399.00	0%
<b>3.1.2</b> 2~4 Branches	\$399.00	\$279.30	30%
<b>3.1.3</b> 5~9 Branches	\$399.00	\$239.40	40%
<b>3.1.4</b> 10 Branches	\$399.00	\$219.45	45%
<b>3.1.5</b> 11~19 Branches	\$399.00	\$199.50	50%
<b>3.1.6</b> 20+ Branches	\$4,000.00	\$4,000.00	0%

\* All Prices are per branch

**EXHIBIT B**

**SCOPE OF WORK**

1.0 INTENT:

- 1.1 This Contract is for electronic products and services. Products and services provided under this Contract are intended for use by Maricopa County Library District (District) Library Branches. Contractor's products and services shall allow for unlimited, simultaneous access by users of District Library Branches:
- 1.2 New contractors may be added to this Contract for these services during the term of the Contract as appropriate in order to meet the continuing needs of the District.

2.0 SCOPE OF SERVICES:

- 2.1 Contractor shall provide access to electronic solutions via the internet. Access shall be unlimited usage and unlimited viewing, printing and downloading of citations and articles from inside the libraries and, if applicable, via remote customer access. Additional Core Subject Areas may be added to this Contract as funding becomes available.

2.2 TAX:

- 2.2.1 The District is exempt from any out-of-state tax on the purchase of books, electronic information and audio/visual materials. Tax Exempt numbers are not issued by the County. A copy of the Arizona Law providing this exemption will be provided at the time of account set-up if requested by Contractor.
- 2.2.2 An in-state contractor may only charge the city sales tax for the city within which the Contractor is located. The exception to this is where the Arizona city has also exempted these taxes.
- 2.2.3 No tax on labor services:

2.3 SERVICE DELIVERY:

It shall be the Contractor's responsibility to ensure service is satisfactory, continuous and uninterrupted at all times during the Contract term. Failure to meet this requirement may result in the Contract being terminated in accordance with Contract Terms and Conditions.

**TUMBLEWEED PRESS INC., 1853A AVENUE RD. STE 4, TORONTO, ONTARIO M5M3Z4**  
**CANADA**

PRICING SHEET: NIGP 9155102, 91551

Terms: NET 30

Vendor Number: W000012956 X

Telephone Number: 416/781-4010

Fax Number: 416/781-2764

Contact Person: Rachela Naccarato

E-mail Address: [rachela@tumblebooks.com](mailto:rachela@tumblebooks.com)

Company Web Site: [www.tumblebooks.com](http://www.tumblebooks.com)

Contract Period: To cover the period ending **May 31, 2016 2021.**