

## **MASTER CONTRACTOR/SERVICES AGREEMENT**

**THIS AGREEMENT** is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1<sup>st</sup> Avenue, Delray Beach, FL 33444 and Home Depot U.S.A., Inc., a Delaware corporation authorized to do business in Florida (hereinafter referred to as "Contractor"), whose address is 2455 Paces Ferry Road, Atlanta, GA 30339, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**WHEREAS**, Maricopa County entered into an agreement with Home Depot U.S.A., Inc. for operating supplies, industrial supplies, and related services pursuant to a solicitation was that conducted and administered by Maricopa County on behalf of the U.S. Communities Government Purchasing Alliance Cooperative Administration (Agreement #16154-RFP). The agreement is effective February 1, 2017 through December 31, 2021, with an additional term up to a maximum of five (5) additional one-year renewals.

**WHEREAS**, the City is registered as a Participating Public Agency of the US Communities Government Purchasing Alliance and desires to use Agreement Number 16154-RFP to purchase products and services from Contractor on the same terms, conditions, and pricing, subject to the City's Purchasing ordinance and Florida law.

**WHEREAS**, the Contractor agrees to extend the terms, conditions, and pricing of Agreement #16154-RFP to the City, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Contractor shall provide to the City maintenance, repair, operating supplies, industrial supplies, and related services in accordance with and pursuant to the same terms, conditions, and pricing of Agreement #16154-RFP.

3 Contractor shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Contractor shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this

section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

4 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

5 In connection with any litigation, arbitration, or dispute arising out of this Agreement, each party shall bear its own attorneys' fees and costs.

**6 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1<sup>ST</sup> AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT [CITYCLERK@MYDELRAYBEACH.COM](mailto:CITYCLERK@MYDELRAYBEACH.COM).**

- a. Contractor shall comply with public records laws, specifically to:
  - i. Keep and maintain public records required by the City to perform the service.
  - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
  - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

7 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its sub- contractors and lower tier sub-contractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its sub- contractors and lower tier sub-contractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

8 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Master Intergovernmental Cooperative Purchasing Agreement (MICPA version 8.1.15).
- c. U.S. Communities Governmental Purchasing Alliance Administration Agreement Number 16154 RFP.

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

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Katerri Johnson, City Clerk

By: Cary D. Glickstein, Mayor

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney

Home Depot U.S.A., Inc.

By:

Richard Nyberg

Print Name:

Title: Contracts Senior Manager



STATE OF Georgia  
COUNTY OF Cobb

The foregoing instrument was acknowledged before me this 23rd day of August, 2017, by Richard Nyberg, as Senior Manager (name of officer or agent, title of officer or agent), of Home Depot U.S.A., Inc. (name of corporation acknowledging), a DE (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced Drivers License (type of identification) as identification



Kathleen A. Schneider  
Notary Public - State of Florida

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