

PARTICIPATION 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 1st Avenue, Delray Beach, FL 33444 and Office Depot, Inc., a Delaware Corporation (hereinafter referred to as "Contractor"), authorized to do business in Florida, whose address is 6600 N. Military Trail, Boca Raton, FL 33496, this 11th day of November, 2019.

WHEREAS, the City desires to purchase office supplies, including but not limited to, copy paper, binders, computer accessories, paper clips, staples, and folders; and

WHEREAS, the City desires to procure these services from Contractor, utilizing existing contract prices provided to City of Tamarac, pursuant to its solicitation number RFP #19-12R; for office supplies; and

WHEREAS, in accordance with solicitation number RFP #19-12R, the City of Tamarac entered into a four-year agreement with Contractor for Office Supplies effective October 14, 2019, through October 13, 2023, which contained a single four-year renewal option (hereinafter referred to as the "Contract"); and

WHEREAS, the City desires to purchase services from Contractor on the same terms, conditions, and pricing provided under the Contract, subject to the terms and conditions of this Agreement, the City's Purchasing Ordinance, and Florida law; and

WHEREAS, the Contractor agrees to extend the terms, conditions, and pricing of the Contract 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 office supplies, including but not limited to, copy paper, binders, computer accessories, paper clips, staples, and folders in accordance with and pursuant to the same terms, conditions, and pricing of the Contract.

3 This Agreement is in full force and effect upon full execution by the parties for an annual not-to-exceed amount of two hundred thousand dollars (\$200,000.00).

4 This Agreement shall be coterminous with the Contract, including any renewals of the Contract.

5 **Termination:**

a. Termination for Convenience: This Agreement may be terminated by the City or Contractor for convenience, upon a minimum of one-hundred eighty (180) days of written notice by the City to the Contractor or by the Contractor to the City, for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination.

b. Default: In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the City against loss pertaining to this termination.

c. Default by City: In addition to all other remedies available to the Contractor, this Agreement shall be subject to cancellation by the Contractor for cause, should the City neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by City of written notice of such neglect or failure.

6 The Contractor shall indemnify and hold harmless the City, its elected and appointed officials employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by or resulting from, the operations of the Contractor or its officers, employees, agents, subcontractors, or independent contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

7 Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue

Delray Beach, Florida 33444
Attn: City Manager

For CONTRACTOR:

Office Depot, Inc.
6600 N. Military Trail
Boca Raton, FL 33496
Attn: Office of General Counsel

8 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party.

9 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.

10 **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. 1ST 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.**

- 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.

11 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 subcontractors and lower tier subcontractors. Contractor understands that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to cooperate with the Inspector General when reasonably requested may be deemed by the City to be a breach of this Agreement.

12 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

13 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. Terms and Conditions of The Contract
- c. Contractor's response to solicitation number RFP #129-12R and any subsequent information submitted by Contractor during the evaluation and negotiation process.

[Remainder of page intentionally left blank]

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

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

CONTRACTOR

By: _____

Print Name: Jim Pollman

Title: Vice President _____

(SEAL)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He / She is personally known to me or has produced _____ (type of identification) as identification.

Notary Public – State of <state>

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