

PARTICIPATING ADDENDUM
under OMNIA Purchasing Cooperative Program for
Maintenance, Repair, Operating Supplies, Industrial Supplies, Related Products/Services

Participating Entity:
CONTRA COSTA COUNTY (CA)

Contractor: **Home Depot U.S.A., Inc.**

This Participating Addendum (“Agreement”) is made and entered into this 7th day of September, 2021, (“Effective Date”) by and between Contra Costa County, a political subdivision of the State of California, (“County”) and Home Depot U.S.A., Inc., a Delaware corporation (“Contractor”), whose principal place of business is 2455 Paces Ferry Road, Atlanta, GA 30339, to enable the County to participate in the awarded OMNIA contract, as follows: Home Depot Stores contract 16154 for Maintenance, Repair, Operating Supplies (MRO), Industrial Supplies, and Related Products and Services, awarded by Maricopa County, Phoenix, AZ (“Master Contract”), a copy of which is attached hereto as Exhibit A.

Recitals

Whereas, Contractor offers goods and services awarded under the Master Contract, after competitive bid processes, and with the OMNIA Public Purchasing Alliance (“OMNIA”) for services and supplies through the Home Depot stores (and homedepot.com); and

Whereas, the County has determined that it desires to enter into this Agreement to contract with the Contractor under the same terms as the Master Contract, subject to amendments to those terms set forth herein to ensure the Agreement satisfies California legal requirements that apply to the County, a California public agency; and

Whereas, the Contractor desires to contract with the County under the terms of the Master Contract, subject to amendments set forth herein.

Agreement

Now therefore, in consideration for the mutual promises contained in this Agreement, the Contractor and the County agree as follows:

1. **Term; Termination.** The term of this Agreement begins on the Effective Date, and it expires on December 31, 2026. The term of this Agreement may be extended by a writing executed by both Parties provided that the Master Contract is in effect as of the first day of the term extension. If the Master Contract expires or is terminated during the term of this Agreement or any extension thereof, the Contractor shall continue to perform under this Agreement until the expiration of the then-current term of this Agreement, or until this Agreement is terminated, whichever occurs first. Notwithstanding anything to the contrary in the Master Contract, either party may terminate this Agreement at any time upon sixty (60) days’ advance written notice to the other party.
2. **Payment Limit.** The County’s total payments to the Contractor for all services and supplies purchased under this Agreement shall not exceed \$9,000,000 (“Payment Limit”).
3. **Incorporation.** The Master Contract is incorporated into and made a part of this Agreement by reference. All of the terms of the Master Contract shall be binding on and accrue to the benefit of the parties to this Agreement, except as follows:

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- a. Contra Costa County a Party. For the purpose of this Agreement: (i) each reference to “Maricopa County” in the Master Contract is deleted and replaced with “Contra Costa County”; (ii) each reference to “COUNTY” or “County” in the Master Contract shall mean Contra Costa County; (iii) each reference to “State of Arizona” is hereby deleted and replaced with “State of California”; (iv) each reference to “state” or “State” in the Master Contract shall mean the State of California; and (v) each reference to “Procurement Officer” in the Master Contract shall mean the County’s Purchasing Agent, or designee.
- b. No Public Works Contracting. Notwithstanding anything to the contrary in the Master Contract or this Agreement, the County will not request, and the Contractor shall not provide or perform, any services or work under this Agreement that would be considered a “public work” under the California Public Contract Code, regardless of whether the cost of the services or work would require competitive bidding. In accordance with this prohibition, for the purpose of this Agreement the following sections of the Master Contract are hereby deleted and of no force or effect:
- i. Section 3.4 (Payment Retention).
 - ii. Section 6.2.12 (Builder’s Risk (Property) Insurance).
 - iii. Section 6.3 (Bond Requirements), inclusive of Sections 6.3.1 through 6.3.2.
 - iv. Section 6.8 (Background Check).
 - v. Section 6.10 (Stop Work Order).
 - vi. Section 6.14 (Contractor License Requirement).
 - vii. Section 6.23 (Certification Regarding Debarment and Suspension), inclusive of Sections 6.23.1 through 6.23.2.
- c. Compliance with Laws. Notwithstanding anything to the contrary in the Master Contract, the Contractor shall be responsible for complying with all applicable state and federal laws during the performance of this Agreement, including but not limited to any applicable California labor and employment laws regarding the payment of prevailing wages when and to the extent required by the California Labor Code. The Contractor will indemnify and defend the County from any claims or liabilities that arise from, or are connected with, the Contractor’s nonperformance of its obligations under this Section 3(c). This indemnity and defense obligation shall survive the expiration or termination of this Agreement.
- d. Insurance. Within 10 business days following the execution of this Agreement, and prior to providing any materials or performing any services under this Agreement, the Contractor shall provide the County a certificate of insurance for each policy required under Section 6.2 (Insurance), naming “Contra Costa County, its officers, employees, and representatives” as additional insureds under that policy. The address identified in Section 6.2.14 (Cancellation and Expiration Notice) is deleted and replaced with: “Cynthia Shehorn, Purchasing Manager, 255 Glacier Drive, Martinez, CA 94553.” As an

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alternative to the certificates of coverage, and subject to the County Risk Management Division's prior written approval, the County will accept the Contractor's insurance-industry recognized Memorandum of Insurance that provides evidence of coverage for the County and identifies "Contra Costa County, its officers, employees, and representatives" as additional insureds.

- e. Amendments. The second sentence of Section 6.16 (Amendments) is deleted and replaced with the following sentence:

"The Purchasing Agent, or designee, shall be responsible for approving any amendments for Contra Costa County following any necessary approval by the Contra Costa County Board of Supervisors."

- f. Non-Discrimination. Section 6.21 (Non-Discrimination) is deleted and replaced with new Section 6.21 (Non-Discrimination), to read:

"6.21. NON-DISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable requirements state and federal anti-discrimination laws prohibiting discrimination, retaliation, and/or harassment on the basis of any protected classification. Such applicable laws may include but may not be limited to the California Fair Employment and Housing Act, the Unruh Civil Rights Act, the California Family Rights Act, the Americans with Disabilities Act, the Family Medical Leave Act, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the National Labor Relations Act, and state and federal whistleblower-protection laws."

- g. Immigration Laws. Section 6.24 (Verification Regarding Compliance with Arizona Revised Statutes §41-4401 and Federal Immigration Laws) is amended by changing the title of the section to "Verification Regarding Compliance with Federal Immigration Laws," and by deleting all references to Arizona statutes.

- h. Audit Rights. New Section 6.27.4 (Survival) is hereby added, to read:

"6.27.4. The requirements in Sections 6.27.1 through 6.27.3 shall survive and remain enforceable for three years following the termination or expiration of the Contract."

- i. Public Records. Section 6.30 (Public Records) is deleted in its entirety and replaced with new Section 6.30 (Public Records), to read:

"6.30 PUBLIC RECORDS

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Contractor acknowledges and agrees that the County is a public agency in the State of California and is required to produce non-exempt, disclosable public records upon request by a member of the public pursuant to the California Public Records Act, Government Code section 6250, *et seq.* (“PRA”), and the Contra Costa County Better Government Ordinance, Division 25 of the Contra Costa County Ordinance Code (“BGO”). Further, the County is required to make records available to the Board of Supervisors and members of the public in public agenda packets pursuant to the Ralph M. Brown Act, Government Code section 54940, *et seq.* (“Brown Act”). The Contractor acknowledges and agrees that the County will present this Contract to the Board of Supervisors for its approval and that the public will have access to this Contract. If the County receives a third-party request under the PRA and/or BGO (“Request”) seeking records connected with this Contract and/or the County’s communications with the Contractor and/or purchases from the Contractor under this Contract, the County will notify the Contractor of the Request. The Contractor shall have ten (10) days after being notified of the Request by the County to seek an order from the Contra Costa County Superior Court preventing the release of any records demanded by the Request. If the Contractor fails to timely seek an order, or if the Court denies the order, the County may disclose all responsive, non-exempt public records without violating any term of this Contract. The requirements of this Section shall survive the termination or expiration of this Contract.”

- j. Governing Law. Section 6.34 (Governing Law) is deleted and replaced with new Section 6.34 (Governing Law), to read:

“6.34 GOVERNING LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of California, without regard to any conflict of laws provisions. Any action to interpret or enforce this Contract shall be brought in a California superior court or federal district court in California with jurisdiction over the subject matter of, and parties to, the litigation, and where venue is proper.”

- k. Other Deletions in Master Contract. For the purpose of this Agreement, and to comply with California legal requirements, the following sections are hereby deleted from the Master Contract and of no further force or effect:

- i. Section 3.8 (Strategic Alliance for Volume Expenditures (\$AVE)).
- ii. Section 3.10 (Voluntary Employee Discounts).
- iii. Section 6.13 (Statutory Right of Cancellation for Conflict of Interest).
- iv. Section 6.25 (Influence).
- v. Section 6.40 (Confidential Information).

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- i. Amendments to Exhibit B (Statement of Work). For the purpose of this Agreement, and to comply with California legal requirements, Exhibit B (Statement of Work) to the Master Contract is amended as follows:

 - i. Section 1.2.2 is deleted and replaced with new Section 1.2.2, to read: “1.2.2 **Related Products** – A complete range of related products offered by Supplier including, but not limited to, the following categories of products: roofing, gutters, downspouts, HVAC, plumbing, electrical, exterior decks, patios and porches, exterior siding, windows and doors, interior and exterior painting, weatherization, ADA improvements, hose fabrication, hydraulic repairs, gearbox repairs, conveyor system repairs, vulcanizing, rubber fabrication, and any other types of residential, commercial, and industrial environments.
 - ii. The following sections are hereby deleted and of no further force or effect: Sections 2.2.2, 2.2.3, 2.2.5 (inclusive of Sections 2.2.5.1 through 2.2.5.10), 2.2.6 (inclusive of Sections 2.2.6.1 through 2.2.6.3), 2.2.7 (inclusive of Sections 2.2.7.1 through 2.2.7.5).
 - iii. Section 2.3.18 (In Store Services) is hereby amended by deleting “planning services (flooring and cabinet).”
 - iv. Section 3.7 (Factory Authorized Service Availability) is deleted and replaced with new Section 3.7 (Factory Authorized Service Availability), to read:

“3.7 **FACTORY AUTHORIZED SERVICE AVAILABILITY**

The Contractor shall have and maintain a local authorized service facility within Contra Costa County. The facility shall be capable of supplying and installing component parts, troubleshooting, repairing and maintaining products purchased under this Contract. Minimum service hours shall be from 8:00 a.m. through 5:00 p.m., PST/PDT, Monday through Friday, but may exclude holidays observed by Contra Costa County.”
 - m. Exhibit C. Exhibit C (Facilities Management Requirements) omitted from the Master Contract also is not incorporated in or made a part of this Agreement.
4. **No Employee Discounts**. Notwithstanding anything to the contrary in the Master Contract, the Contractor shall not offer or provide County officers, employees, representatives, or volunteers, when acting in their individual private capacities, any discount, reward, or anything of value except to the extent that said discount, reward, or thing of value is offered or provided to members of the public generally.
 5. **Purchase Orders**. If any purchase order is issued to procure materials, supplies, and/or services under this Agreement, the purchase order will identify this Agreement, which shall be sufficient

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to incorporate the terms of this Agreement into the purchase order by reference. If there is any conflict between a term or condition of this Agreement and a term or condition of any purchase order, the term or condition of this Agreement shall prevail and govern. A form of payment, paying in full all costs under the purchase order, will accompany each purchase order.

6. **Payment.** Notwithstanding anything to the contrary in the Master Contract or this Agreement, when the County makes payments using a Home Depot Invoice Account, the County may withhold payment to the Contractor following written notice to Contractor that: (i) the Contractor has failed to fully perform its obligations under this Agreement; (ii) the Contractor has neglected, failed, or refused to furnish information or cooperate with any inspection, review, or audit of its services or records; or (iii) the Contractor has failed to sufficiently itemize or document its billing statement.
7. **No Conflicts of Interest.** The Contractor covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law, or that would otherwise conflict in any manner or degree with the performance of its services and obligations hereunder. The Contractor further covenants that in the performance of this Agreement, the Contractor will employ no person having any such interest. If requested to do so by the County, the Contractor shall complete a "Statement of Economic Interest" form and deliver it to the County, and shall require any other person performing services under this Agreement to complete a "Statement of Economic Interest" form and deliver it to the County. In addition to any other indemnity provided by the Contractor in this Agreement, the Contractor shall indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, and damages resulting from or related to any and all alleged conflicts interest. The Contractor's indemnity and defense obligations under this section shall survive the expiration or termination of this Agreement.
8. **No Waiver.** No waiver of any provision of this Agreement by the County is valid unless it is in writing and signed by the County. Waiver by the County at any time of any breach of this Agreement may not be deemed a waiver of, or consent to, a subsequent breach of the same or any other provision of this Agreement. If the Contractor's action requires the consent or approval of the County, that consent or approval on one occasion may not be deemed a consent to or approval of that action on any later occasion, or a consent to, or approval of, any other action.
9. **Independent Contractor; No Joint Venture.** It is understood and agreed that the Contractor is, at all times, an independent contractor and its employees are not employees of the County. At all times during the term of this Agreement, neither party will function as or represent it to be the other party or its agent, and no officer, employee, or agent of one party shall hold himself or herself out to be an officer, employee, or agent of the other party.
10. **Enrollment.** Eligibility for participation in the program(s) are as follows: Contractor's Home Depot stores contract - requires completion of the web-based enrollment requirements by the County and its eligible participants through the website identified by Home Depot – under

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separate cover. Eligible sales will commence upon completion of the enrollment based upon sales that occurred on those registered accounts during the annual rebate period. The web enrollment process accommodates the secure inclusion of Home Depot Accounts, credit card accounts, Pro Purchase Accounts, and checking accounts with the capability to add/remove accounts during the performance of the Agreement. Tracking of accounts will begin once they are successfully enrolled via the website.

11. **Amendment.** This Agreement may be amended or modified at any time by mutual agreement of the parties in writing. Any amendment of this Agreement must be approved by the Contra Costa County Board of Supervisors before it will be effective.
12. **No Encumbrances.** Home Depot affirms that there are no encumbrances or obstacles, which will prohibit its performance pursuant to the terms of this Agreement.
13. **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction of any party in connection therewith.
14. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. Notwithstanding anything to the contrary in the Master Contract, this Agreement may not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement.
15. **Severability.** If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected thereby.
16. **Notices.** Notices to the parties shall be provided to:

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Home Depot:

Home Depot U.S.A., Inc.
 2455 Paces Ferry Road
 Atlanta, GA 30339
 Telephone: 866-589-0690
 Contact: Richard Nyberg, Director Pro Contracts
 Email: richard_nyberg@homedepot.com

County:

Contra Costa County
 40 Muir Road, 2nd Floor
 Martinez, CA 94553
 Telephone: 925-957-2495
 Contact: Cynthia Shehorn
 Email: cindy.shehorn@pw.ccounty.us

IN WITNESS, WHEREOF, the parties have executed this Agreement as of the Effective Date.

Participating Entity: Contra Costa County	Contractor: Home Depot U.S.A., Inc.
Signature:	Signature:  8/3/21
Name: Cynthia Shehorn	Name: Richard Nyberg
Title: Procurement Services Manager	Title: Director Pro Contracts

Attachments

Exhibit A Master Contract