



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget  
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
P.O. BOX 30026 LANSING, MICHIGAN 48909

## CONTRACT CHANGE NOTICE

Change Notice Number 6  
to  
Contract Number 071B2200178

<b>CONTRACTOR</b>	HOME DEPOT USA INC
	2455 Paces Ferry Road
	Atlanta, GA 30339
	Rochelle Komlosi
	412-418-9988
	rochelle_komlosi@homedepot.com
	*****3319

<b>STATE</b>	Program Manager	Statewide	Statewide
		N/A	
		N/A	
	Contract Administrator	Steve Rigg	DTMB
		(517) 284-7043	
		riggs@michigan.gov	

CONTRACT SUMMARY				
<b>DESCRIPTION:</b> Building Materials and MRO related items - Statewide				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
May 15, 2012	July 31, 2014	3 - 1 Year	July 31, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Primary: payment required at time of purchase Secondary: Home Depot Account, NET 30		Varies – based on availability of items purchased		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>	N/A	July 31, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$38,000,000.00		\$ 0.00	\$38,000,000.00	

**DESCRIPTION:** Effective July 14, 2016, the third option year available on this contract is hereby exercised. The revised contract expiration date is July 31, 2017. All other terms, conditions, specifications and pricing remain the same. Per Vendor and Agency agreement, and DTMB Procurement approval.

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 5**  
 to  
**CONTRACT NO. 071B2200178**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR		PRIMARY CONTACT		EMAIL
Home Depot Usa Inc 2455 Paces Ferry Road Atlanta, GA 30339		Rochelle Komlosi		Rochelle_Komlosi@homedepot.com
		PHONE		CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
		(412) 418-9988		3319
STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Steve Rigg	(517) 284-7043	riggs@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Steve Rigg	(517) 284-7043	riggs@michigan.gov
CONTRACT SUMMARY				
<b>DESCRIPTION:</b> This contract is to provide building materials, hardware, plumbing, painting and miscellaneous MRO related items for use by State of Michigan agencies and participating MiDEAL members.				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
May 15, 2012	July 31, 2014	2 - 1 Year	July 31, 2016	
PAYMENT TERMS			DELIVERY TIMEFRAME	
Primary: payment required at time of purchase. Secondary: Home Depot Account, net 30			Varies - based on availability of items purchased	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	N/A
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$8,000,000.00		\$ 30,000,000.00	\$38,000,000.00	
<b>DESCRIPTION:</b> Effective January 13, 2016, this Contract is hereby increased by \$30,000,000.00. All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, and DTMB approval. This amendment is necessary for the imminent protection of public health and safety because of the State of Emergency that was declared in the City of Flint. This is allowed under State Administrative Guide to State Government policy number 0510.38 Emergency Purchase.				

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B2200178**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR		PRIMARY CONTACT		EMAIL
Home Depot Usa Inc 2455 Paces Ferry Road Atlanta, GA 30339		Rochelle Komlosi		Rochelle_Komlosi@homedepot.com
		PHONE		CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
		(412) 418-9988		3319
STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Steve Rigg	(517) 284-7043	riggs@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Steve Rigg	(517) 284-7043	riggs@michigan.gov
CONTRACT SUMMARY				
<b>DESCRIPTION:</b> This contract is to provide building materials, hardware, plumbing, painting and miscellaneous MRO related items for use by State of Michigan agencies and participating MiDEAL members. This is an <b>OPTIONAL</b> use contract.				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
May 15, 2012	July 31, 2014	2 - 1 Year	July 31, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Primary: payment required at time of purchase. Secondary: Home Depot Account, net 30		Varies - based on availability of items purchased		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	N/A
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$3,000,000.00		\$ 5,000,000.00	\$8,000,000.00	
<b>DESCRIPTION:</b> Effective October 20, 2015, this Contract is hereby increased by \$5,000,000.00. All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB approval, and State Administrative Board approval on October 20, 2015.				

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 3**  
 to  
**CONTRACT NO. 071B2200178**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Home Depot U.S.A, Inc.  Dba The Home Depot Stores in Michigan  Atlanta, GA 30339	Rochelle Komlosi	Rochelle_komlosi@homedepot.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	412-418-9988	3319

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Building Materials and MRO related items – Optional Use Contract - Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 15, 2012	July 31, 2014	3 – one year options	July 31, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Primary: payment required at time of purchase. Secondary: Home Depot Account, net 30	Primary: Walk In/Walk Out retail Secondary: F.O.B. Origin	Various	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	July 31, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$3,000,000.00		\$0.00	\$3,000,000.00	

**DESCRIPTION:**  
 Effective July 27, 2015, the second option year available on this contract is hereby exercised. Also, the following language is hereby ADDED to the contract:

1.2.5 eProcurement Punch-out portal

State of Michigan Agencies and participating MiDEAL members can also order through a dedicated State of Michigan eProcurement punch-out portal from Home Depot.

The eProcurement punch-out portal (Only) will include the following specifics:

Home Depot will offer a 3% discount for eProcurement orders only completed exclusively through the dedicated State of Michigan eProcurement punch-out portal. Home Depot will notify the State of Michigan should the discount need to change; based upon Home Depot's discretion. As a result of the change request, Home Depot and the State of Michigan must mutually agree on Change Notice.

Home Depot and the State will mutually work to ensure the associated eProcurement punch-out portal is available to their participants within 60 days of the execution of this change notice.

All transaction requirements in section 1.2.1 also apply for these eProcurement transactions.

All other terms, conditions, specifications and pricing remain the same. Per Vendor and Category Team agreement, and DTMB Procurement approval.

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 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
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 OR  
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**CHANGE NOTICE NO. 2**  
 to  
**CONTRACT NO. 071B2200178**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Home Depot U.S.A., Inc d/b/a The Home Depot Stores in Michigan 2455 Paces Ferry Road	See Attachment B	
	TELEPHONE	CONTRACTOR #, MAIL CODE
	See Attachment B	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov
BUYER	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: The contract is to provide building materials, hardware, plumbing, painting and miscellaneous items for use by State of Michigan agencies and participating MiDEAL members. This is an <b>OPTIONAL</b> use contract.			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 15, 2012	July 31, 2014	3, 1year options	July 31, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
<b>Primary:</b> Payment required at time of purchase. <b>Secondary:</b> Home Depot Account, net 30	<b>Primary:</b> Walk In/Walk Out Retail <b>Secondary:</b> F.O.B. Origin	<b>Primary:</b> Walk In/Walk Out Retail <b>Secondary:</b> Various as arranged with Contractor within 25 miles	Various
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	July 31, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$3,000,000.00		

Effective June 27, 2014, the first option year available on this Contract is hereby utilized. The REVISED Contract end date is July 31, 2015.

All other terms, conditions, specifications and pricing remain the same. Per vendor and agency agreement and DTMB Procurement.

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B2200178**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Home Depot U.S.A., Inc d/b/a The Home Depot Stores in Michigan 2455 Paces Ferry Road	See Attachment B	
	TELEPHONE	CONTRACTOR #, MAIL CODE
	See Attachment B	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov
BUYER	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: The contract is to provide building materials, hardware, plumbing, painting and miscellaneous items for use by State of Michigan agencies and participating MiDEAL members. This is an optional use contract.			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 15, 2012	July 31, 2014	3, 1year options	July 31, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
<b>Primary:</b> Payment required at time of purchase. <b>Secondary:</b> Home Depot Account, net 30	<b>Primary:</b> Walk In/Walk Out Retail <b>Secondary:</b> F.O.B. Origin	<b>Primary:</b> Walk In/Walk Out Retail <b>Secondary:</b> Various as arranged with Contractor within 25 miles	Various
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$3,000,000.00		

Effective immediately, Attachment B, **Home Depot Locations & Contact Information**, has been updated to add store #2775 in Iron Mountain and to update contact information. Effective immediately, the Primary Contact person has been changed to "See Attachment B". Please also note that the buyer has been changed to Steve Rigg. All other terms, conditions, pricing and specifications remain unchanged.

Per agency request, vendor agreement and approval from DTMB-Procurement.

**ATTACHMENT B**

**HOME DEPOT LOCATIONS & CONTACT INFORMATION**

**Home Depot Government Account  
Manager**

**Scott Matthews - 615-681-5470  
Director Strategic Accounts-  
Government**

[uscommunities@homedepot.com](mailto:uscommunities@homedepot.com)

<b>Home Depot Pro Account Representative</b>	<b>COUNTY</b>	<b>STORE #</b>	<b>STREET #</b>	<b>ADDRESS</b>	<b>CITY / STATE</b>	<b>ZIP</b>
<b>Colleen Weaver</b>  <b>Cell - 419-819-7066</b>  <b>Fax - 1-877-981-1268</b> <b><u>Colleen A Weaver@homedepot.com</u></b> <b>17197 N Laurel Park Drive, Building 3, Suite 400</b>  <b>Livonia, MI 48152</b>	Washtenaw	2721	3300	Carpenter Road	Ypsilanti	48197
	Wayne	2703	39825	Ford Road	Canton	48187
	Wayne	2704	39500	W. 7 Mile Road	Northville	48167
	Wayne	2709	21100	Penn Street	Taylor	48180
	Wayne	2710	25451	Michigan Avenue	Dearborn Hts	48125
		2718	20300	Kelly Road	Harper Woods	48225
	Wayne	2738	23300	W. Allen	Woodhaven	48183
	Wayne	2742	13500	Middlebelt Drive	Livonia	48150
	Wayne	2744	45900	Michigan Avenue	Canton	48188
	Wayne	2757	5951	Mercury Drive	Dearborn	48126
	Wayne	2762	47725	Five Mile Road	Plymouth	48170
	Wayne	2781	18700	Meyers Road	Detroit	48235
	Wayne	2789	11100	Telegraph Road	West Taylor	48180
	Wayne	6821	3163	Fairlane Dr.	Allen Park	48101
<b>Home Depot Pro Account Representative</b>	<b>COUNTY</b>	<b>STORE #</b>	<b>STREET #</b>	<b>ADDRESS</b>	<b>CITY / STATE</b>	<b>ZIP</b>
<b>David Coble</b>  <b>Cell - 419-819-7066</b>  <b>Fax - 1-877-959-0413</b>  <b>david_coble@homedepot.com</b> <b>17197 N Laurel Park Drive, Building 3, Suite 400</b>  <b>Livonia, MI 48152</b>	Allegan	2771	1227	M89	Plainwell	49080
	Berrien	2768	2075	Pipestone Road	Benton Harbor	49022
	Branch	2766	825	E. Chicago Street	Coldwater	49036
	Eaton	2725	936	S. Waverly Road	Lansing	48917
	Jackson	2770	1400	N. Wisner Road	Jackson	49202
	Kalamazoo	2728	6685	Westnedge	Portage	49002
	Kent	2715	4646	28th Street, S. E.	Grand Rapids	49512
	Kent	2720	2727	Alpine Avenue	Walker	49544
	Kent	2748	4900	Wilson Avenue SW	Grandville	49418
	Kent	2761	257	54th Street S. W.	Wyoming	49548

	Muskegon	2754	2699	Henry Street	Roosevelt Park	494 41
	Okemos	2723	1749	Newman Drive	Okemos	488 64
	Ottawa	2780	900	Jackson Street	Grand Haven	494 17
	Saint Joseph	2785	1301	South US 131	Three Rivers	490 93
<b>Home Depot Pro Account Representative</b>	<b>COUNTY</b>	<b>STOR E #</b>	<b>STREET #</b>	<b>ADDRESS</b>	<b>CITY / STATE</b>	<b>ZIP</b>
<b>Tom Abbott</b>  <b>Cell - 248-686-4241</b>  <b>Fax - 1-866-589-0691</b>  <b>thomas_j_abbott@homedepot.com</b> <b>17197 N Laurel Park Drive, Building 3, Suite 400</b>  <b>Livonia, MI 48152</b>	Alpena	2760	1348	M-32	Alpena	497 07
	Bay	2739	3860	State Street	Bay City	487 06
	Emmet	2755	1700	Anderson	Petoskey	497 70
	Genessee	2716	4380	W. Corunna Road	Flint Twp	485 32
	Genessee	2717	4245	E. Court Street	Burton	485 19
	Genessee	2741	15255	Silver Parkway	Fenton	484 30
	Genessee	2763	1222	West Hill Road	Mundy Twp	485 07
	Genessee	2765	5300	W. Pierson Road	Flushing	484 33
	Grand Traverse	2726	2522	Crossing Circle	Traverse City	496 84
	Isabella	2732	5650	E. Pickard	Mt. Pleasant	488 58
	Lapeer	2736	1500	Summit Street	Lapeer	484 46
	Mason	2767	3865	West US Hwy 10	Ludington	494 31
	Midland	2747	1100	Joe Mann Blvd	Midland	486 42
	Ogemaw	2782	2892	Cook Road	West Branch	486 61
	Otsego	2759	1381	Main Street	Gaylord	497 35
	Roscommom	2769	2241	West Houghton Lake Dr	Houghton Lake	486 29
	Saginaw	2714	3132	Bueker Drive	Saginaw	486 04
	Saginaw	2779	8670	Gratiot Road	West Saginaw	486 09
	Wexford	2752	3786	S. US 131	Cadillac	496 01
	<b>Home Depot Pro Account Representative</b>	<b>COUNTY</b>	<b>STOR E #</b>	<b>STREET #</b>	<b>ADDRESS</b>	<b>CITY / STATE</b>
<b>Rick Michell</b>  <b>Cell - 586-215-6548</b>  <b>Fax - 1-866-589-0691</b> <b>richard_A_michell@homedepot.com</b> <b>17197 N Laurel Park Drive, Building 3, Suite 400</b>  <b>Livonia, MI 48152</b>	Livingston	2724	8053	Challis Road	Brighton	481 16
	Livingston	2751	3330	E. Grand River	Howell	488 43
	Saint Clair	2733	4195	24th Ave Lighthouse Point	Fort Gratiot	480 59
	Shiawassee	2772	2205	East M21	Owosso	488 67
	Macomb	2702	25879	Hoover Road	Warren	480 89
	Macomb	2707	20500	13 Mile Road	Roseville	480 66

	Macomb	2708	45301	N. Point Blvd.	Utica	483 15
	Macomb	2734	51335	Gratiot	Chesterfield Twp	480 51
	Macomb	2740	37000	Van Dyke Avenue	Sterling Hts	483 12
	Macomb	2758	8760	26 Mile Road	Shelby Twp	483 16
	Macomb	2776	20777	Hall Road	Macomb Twp	480 44
<b>Home Depot Pro Account Representative</b>	<b>COUNTY</b>	<b>STORE #</b>	<b>STREET #</b>	<b>ADDRESS</b>	<b>CITY / STATE</b>	<b>ZIP</b>
<b>Paul Martens</b> Cell - 248-388-9364 Fax - 877-981-1570 paul_martens@homedepot.com 17197 N Laurel Park Drive, Building 3, Suite 400 Livonia, MI 48152	Oakland	2701	545	South Telegraph	Pontiac	483 41
	Oakland	2706	1177	Coolidge Hwy	Troy	480 84
	Oakland	2711	29801	Southfield Road	Southfield	480 76
	Oakland	2722	355	Haggerty Road	Commerce Twp	483 90
	Oakland	2727	225	West Avon Road	Rochester Hills	483 07
	Oakland	2729	9078	Highland Road	White Lake	483 86
	Oakland	2731	660	W. 12 Mile Road	Madison Heights	480 71
	Oakland	2737	47950	Grand River Avenue	Novi	483 74
	Oakland	2764	4150	Joslyn Road	Auburn Hills	483 26
	Oakland	2773	32525	Northwestern Highway	Farmington Hills	483 34
	<b>Home Depot Pro Account Representative</b>	<b>COUNTY</b>	<b>STORE #</b>	<b>STREET #</b>	<b>ADDRESS</b>	<b>CITY / STATE</b>
<b>Cheri Novak</b> Cell - 651-271-1832 Fax - 866-589-0691 cheri_novak@homedepot.com 6120 Earle Brown Dr., 4th Fl Brooklyn Ctr, MI 55430	Upper Peninsula	2775	W814 1	Highway US 2	Iron Mountain	498 01

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48913

July 17, 2012

**NOTICE  
 OF  
 CONTRACT NO. 071B2200178  
 Between  
 THE STATE OF MICHIGAN  
 And**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Home Depot U.S.A., Inc d/b/a The Home Depot stores in Michigan 2455 Paces Ferry Road Atlanta, GA 30339	Colleen Weaver	Colleen_A_Weaver@homedepot.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(419) 819-7066	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Klatra Pickett	(517) 373-7374	<a href="mailto:pickettk@michigan.gov">pickettk@michigan.gov</a>
BUYER:	DTMB	Klatra Pickett	(517) 373-7374	<a href="mailto:pickettk@michigan.gov">pickettk@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: The Contract is to provide building materials, hardware, plumbing, painting and miscellaneous items for use by State of Michigan agencies and participating MiDEAL members.			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Two (2) years	May 15, 2012	July 31, 2014	Three (3) years
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
<b>Primary:</b> Payment required at the time of purchase. <b>Secondary:</b> Home Depot Account, Net 30	<b>Primary:</b> Walk In/ Walk Out Retail <b>Secondary:</b> F.O.B. Origin	<b>Primary:</b> Walk In/Walk Out Retail <b>Secondary:</b> Various as arranged with Contractor, within 25 miles	Various
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$3,000,000.00

The terms and conditions of this Contract are attached.

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48913

**CONTRACT NO. 071B2200178**  
**Between**  
**THE STATE OF MICHIGAN**  
**And**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Home Depot U.S.A., Inc d/b/a The Home Depot stores in Michigan 2455 Paces Ferry Road Atlanta, GA 30339	Colleen Weaver	Colleen_A_Weaver@homedepot.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(419) 819-7066	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Klatra Pickett	(517) 373-7374	<a href="mailto:pickettk@michigan.gov">pickettk@michigan.gov</a>
BUYER:	DTMB	Klatra Pickett	(517) 373-7374	<a href="mailto:pickettk@michigan.gov">pickettk@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: The Contract is to provide building materials, hardware, plumbing, painting and miscellaneous items for use by State of Michigan agencies and participating MiDEAL members.			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Two (2) years	May 15, 2012	July 31, 2014	Three (3) years
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
<b>Primary:</b> Payment required at the time of purchase. <b>Secondary:</b> Home Depot Account, Net 30	<b>Primary:</b> Walk In/ <b>Secondary:</b> Walk Out Retail <b>Secondary:</b> F.O.B. Origin	<b>Primary:</b> Walk In/Walk Out Retail <b>Secondary:</b> Various as arranged with Contractor, within 25 miles	Various
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of the Participating Addendum with the US Communities Cooperative Purchasing Contract acting by and through the State of Arizona, Maricopa County, Contract number 11019 and the attached Article 2 Terms and Conditions of the State of Michigan. In the event of any conflicts between the specifications, and terms and conditions, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$3,000,000.00

**THIS IS NOT AN ORDER: Orders for delivery will be issued directly by the using State agency.**

---

---

**FOR THE CONTRACTOR:**

Firm Name

---

Authorized Agent Signature

---

Authorized Agent (Print or Type)

---

Date

---

**FOR THE STATE:**

Signature

---

Name/Title

---

DTMB/Procurement

---

Date

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## Definitions

**This section provides definitions for terms used throughout the Contract.**

**Business Day** - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

**Buyer** – the DTMB-Procurement employee identified on the cover page of the Contract

**Chronic Failure** - as defined in applicable Service Level Agreements.

**Contract** – an agreement that has been approved and executed by the awarded bidder, the DTMB-Chief Procurement Officer and the State Administrative Board.

**Contractor** – the awarded bidder after the Effective Date.

**Days** - Business Days unless otherwise specified.

**Deleted, Not Applicable** - the section is not applicable or included in the Contract. This is used as a placeholder to maintain consistent numbering.

**Deliverable(s)** - physical goods or commodities as required or identified in a Statement of Work.

**Eastern Time** – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

**Effective Date** - the date that a binding contract is executed by the final party.

**Final Acceptance** - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

**Key Personnel** - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

Home Depot Account- is a Home Depot non-interest bearing in-house credit account. The Contractor will accept a purchase order when accompanied with a Home Depot Account at the time of each transaction..

**Post-Industrial Waste** - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

**Purchase Order** - a written document issued by the State that requests full or partial performance of the Contract.

**State** - the State of Michigan.

**State Location** - any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

**Stop Work Order** - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

**Subcontractor** - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

**Unauthorized Removal** - the Contractor's removal of Key Personnel without the prior written consent of the State.



**Article 1 – Statement of Work**

**1.1 Project Identification**

The Contract is to provide building materials, hardware, plumbing, painting and miscellaneous items for use by State of Michigan agencies and participating MiDEAL members. The Contract is based on the Terms and Conditions of U.S. Communities Purchasing Alliance/ Maricopa County, Phoenix, AZ Contract Number 11019 with Home Depot also referred to as the Contractor. (Attachment D)

**1.2 Scope of Work and Deliverable(s)**

**1.2.1 In Scope**

State of Michigan Agencies and participating MiDEAL members will be able to procure the items listed below based upon the everyday low retail price available at the time of purchase and the incentives identified in the US Communities contract and Section 1.6.5 of the Contract.

- Lumber
- Building Materials
- Flooring
- Paint
- Tools
- Plumbing
- Electrical
- Lighting
- Garden/Cleaning Supplies
- Kitchen/Bath/Appliances
- Millwork (windows and doors)
- Window Treatments

The Contract will not include maintenance repair and operating items, services or services related to installation, repair and renovation.

The Contractor will not accept Cash for procuring items listed within the Contract. State of Michigan Agencies must pre-register forms of payment with the Contractor to use the Contract. Forms of payment to include, Procurement Credit Card (P-Card) or a Pre-approved Home Depot Account (for use of a purchase order).

MiDeal members must register forms of payment with the Contractor prior to use of the Contract. Registering form of payment will ensure that sales are tracked under this agreement. To ensure no tax is incurred on the transactions, the State must also register with Home Depot for tax exemption. Forms of payment include: bank cards, checking accounts or a Pre-approved Home Depot Account (for use of a purchase order).

Each State agency or local unit of government must establish their own Home Depot Account if they intend on issuing purchase orders. The Contractor will accept a purchase order and apply it to a Home Depot Account. Contact your local Pro Account Representative for a Home Depot Account application. (Attachment B, Home Depot Locations and Contact Information)

**1.2.2 Deliverable(s) - Deleted, Not Applicable**

**1.2.3 Quantity**

No minimum order required. Home Depot is a Walk In /Walk Out retailer.

**1.2.4 Ordering**

Walk in/Walk out orders must be processed at the Contractor’s Pro Desk (Attachment B, Home Depot Locations and Contact Information)

Phone orders, utilizing a purchase order must be placed with a Pro Representative (Attachment B, Home Depot Locations and Contact Information)

**1.3 Management and Staffing**

**1.3.1 Project Management**

The Contractor will carry out the project under the direction and control of the Department of Technology, Management and Budget, Procurement.

**1.3.2 Reports**

See Section 2. Changes, c.), Participating Addendum (Attachment C)



**1.3.3 Staff, Duties, and Responsibilities**

Attachment B, Home Depot Locations and Contact Information, provides a list of Pro Account teams who are trained to support procurement requests and activities.

If the listed Pro Account Teams cannot meet customer service requirements assistance is available through the regions' Government Sales Director, Scott Matthews, who will work as the top level point of contacts to assist in resolving issues any State purchaser may have, to include business review meetings, and requests for training, with the State Department of Technology, Management and Budget, Procurement. The Government Sales Director, Scott Matthews can be reached at 615-681-547, or by email at, [Scott.Matthews@homedepot.com](mailto:Scott.Matthews@homedepot.com)

**1.3.4 Meetings - Deleted, Not Applicable**

**1.3.5 Place of Performance - Deleted, Not Applicable**

**1.3.6 Reserved**

**1.3.7 Binding Commitments - Deleted, Not Applicable**

**1.3.8 Training**

The Contractor shall provide training to individual agencies, when necessary and upon mutual agreement of the parties, on aspects of ordering, shipping, billing, and receiving. At the request of any State agency or participating MiDEAL member, the Contractor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Contractor shall also provide agency training jointly with the State as needed during the period covered by the Contract at no additional charge.

**1.3.9 Security**

Although, the Contract is for Walk In/Walk Out purchases, the Contract may require frequent deliveries to State of Michigan facilities. The State may decide to require information regarding security background check. If so, the Contractor will be required to provide to the State a list of all delivery people that will service State of Michigan facilities, including name, date of birth and driver license number.

The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities; see section 2.051, Background Checks and Security.

The Contractor has enlisted the services of Choicepoint to qualify drivers and maintain Driver Qualification Files. Choicepoint will work with current or potential Home Depot associates to attain all required documentation as listed in the Program requirements below if needed or available:

- 3 years of certificates of violations
- 3 years of annual reviews
- 3 years of employment verification
- Copy of drivers license
- Copy of current medical card
- Copy of road test & certificate
- (GVWR 10,000-26,000lbs)
- DOT Driver application
- Motor Vehicle Record check every 6 months
- Signed release for request of driving record
- Hours of duty form, if driving less than 6 months
- Physical
- Random, post accident and reasonable cause drug and alcohol test

**1.4 Delivery and Acceptance**

**1.4.1 Time Frames**

The Contractor is a Walk In/ Walk Out retailer. Delivery service for large order will be available at the discretion of the Pro Account Representative. A targeted delivery fee of \$59.00, is subject to change with each transaction. Delivery fees will be identified and coordinated at the time of each transaction. (See, Attachment B, Home Depot Locations and Contact Information)

**1.4.2 Minimum Order**

Home Depot is a Walk In /Walk Out retailer. No minimum order required.



### **1.4.3 Packaging**

Although, the Contract is for Walk In/Walk Out purchases, some deliveries may occur. Therefore, packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

### **1.4.4 Palletizing**

If applicable, shipments shall be palletized whenever possible and shall conform to the following: Manufacturer's standard 40-wqy shipping pallets.

### **1.4.5 Delivery Term**

F.O.B. Origin, at local Home Depot Stores.

### **1.4.6 Acceptance Process - Deleted, Not Applicable**

### **1.4.7 Criteria - Deleted, Not Applicable**

## **1.5 Proposal Pricing**

### **1.5.1 Pricing**

The Contract is for retail items, pricing will vary by item. Volume pricing is available per Section 1.6.5.

### **1.5.2 Quick Payment Terms -Deleted, Not Applicable**

### **1.5.3 Price Term**

The Contractor is a Walk In/Walk Out retailer, participants will be charged the current retail price or special price available through volume pricing (See Section 1.6.5).

### **1.5.4 Tax Excluded from Price**

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes provided the State is registered with Home Depot for tax exemption and that is identified at the time of each transaction. .

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax provided the State is registered with Home Depot for tax exemption and that is identified at the time of each transaction .

(c) The Contractor will not accept Cash for procuring items listed within the Contract and under the contract.

To ensure tax exemption all forms of acceptable payment, as defined below, will be pre-registered prior to use of the Contract.

State agencies who are authorized to use the Contract will use a pre-registered form of payment to include, Procurement bank cards (P-Cards) or a pre-approved Home Depot Account that is registered with Home Depot.

The Contractor will accept a purchase order and apply it to a Home Depot Account. Contact your local Pro Account Representative for a Home Depot Account application. (Attachment B, Home Depot Locations and Contact Information)

MiDeal members must register forms of payment with the Contractor prior to use of the Contract. Registering form of payment will ensure that no tax is incurred on the sale. Forms of payment to include, bank cards, checking accounts or a Pre-approved Home Depot Account.



### **1.5.5 Invoices -Deleted, Not Applicable**

## **1.6 Commodity Requirements**

### **1.6.2 Research and Development - Deleted, Not Applicable**

### **1.6.3 Quality Assurance Program - Deleted, Not Applicable**

### **1.6.4 Warranty for Deliverable(s)**

The Contractor is a reseller of products and as such does not provide a warranty for the products it supplies, hereunder, only the warranty given by the manufacturer, if any shall apply.

### **1.6.5 Special Incentives**

State Agencies and MiDeal Members are automatically qualified for Volume Pricing discount for transactions over \$2500. Currently, the average savings exceeds 10% nationwide (depending on dollar value, quantity and type of material).

### **1.6.6 Energy Efficiency - Deleted Not Applicable**

### **1.6.7 Environmental Requirements**

The Contractor's EcoOptions, product labeling includes energy efficiency, water conservation and healthy homes. Upon request, the Contractor also provides product knowledge and project instructions at any local location regarding the products and projects they are planned to be used on.

### **1.6.8 Recycled Content and Recyclability -Deleted, Not Applicable**

### **1.6.9 Materials Identification and Tracking**

The following information is located on each individual item.

- (a) **Hazardous Chemical Identification.**
- (b) **Mercury Content.**
- (c) **Brominated Flame Retardants.**

## **1.7 Extended Purchasing**

### **1.7.1 MiDEAL**

The Management and Budget Act, MCL 18.1263, permits the State to provide purchasing services to any city, village, county, township, school district, intermediate school district, and non-profit hospital, institution of higher education, or community or junior college (MiDEAL Members). A current listing of approved MiDEAL Members is available at: [www.michigan.gov/mideal](http://www.michigan.gov/mideal).

Deliverable(s) to the State and MiDEAL Members at the established State Contract prices and terms, subject to Section 2.22.1, MiDEAL Requirements.



## **Article 2 – Terms and Conditions**

### **2.1 Contract Term**

#### **2.1.1 Contract Term**

The Contract term begins May 15, 2012 and expires July 31, 2014. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Purchasing Operations. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

#### **2.1.2 Options to Renew**

Renewal of the Contract is in conjunction with section 1.2 of the U.S. Communities Purchasing Alliance/ Maricopa County, Phoenix, AZ Contract Number 11019 with Home Depot also referred to as the Contractor. (Attachment D)

### **2.2 Payments and Taxes**

#### **2.2.1 Fixed Prices for Deliverable(s)**

Prices are fixed for all Deliverable(s) based upon the price at the time of each transaction.

#### **2.2.2 Payment Deadlines**

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 30 days after receipt.

#### **2.2.3 Invoicing and Payment – In General - Deleted, Not Applicable**

#### **2.2.4 Pro-ration - Deleted, Not Applicable**

#### **2.2.5 Final Payment and Waivers - Deleted, Not Applicable**

#### **2.2.6 Electronic Payment Requirement - Deleted, Not Applicable**

#### **2.2.7 Employment Taxes - Deleted, Not Applicable**

#### **2.2.8 Sales and Use Taxes**

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

### **2.3 Contract Administration**

#### **2.3.1 Issuing Office**

The Contract is issued by DTMB-Procurement on behalf of all State Agencies. **DTMB-Procurement is the only entity authorized to modify the terms and conditions of the Contract, including the prices and specifications.** The Contract Administrator within DTMB-Procurement for the Contract is:



Klatra Pickett  
Department of Technology, Management and Budget  
Procurement  
Stevens T. Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
pickettk@michigan.gov  
517-373-7374

**2.3.2 Contract Compliance Inspector - Deleted, Not Applicable**

**2.3.3 Project Manager - Deleted, Not applicable**

**2.3.4 Contract Changes**

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Purchasing Operations will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Purchasing Operations issues a duly executed Contract Change Notice for the proposed change.

**2.3.5 Price Changes - Deleted, Not applicable**

**2.3.6 Notices**

All notices and other communications required or permitted under the Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan  
DTMB-Procurement  
Attention: Klatra Pickett  
PO Box 30026  
530 West Allegan  
Lansing, MI 48909  
pickettk@michigan.gov  
517-335-0046 (fax)

If to Contractor:

Colleen Weaver  
17197 N Laurel Park Drive, Building 3, Suite 400  
Livonia, MI 48152  
[Colleen\\_A\\_Weaver@homedepot.com](mailto:Colleen_A_Weaver@homedepot.com)  
419-819-7066



Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

### **2.3.7 Covenant of Good Faith**

Each party must act reasonably and in good faith. Unless otherwise provided in the Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

### **2.3.8 Assignments**

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign the Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

### **2.3.9 Equipment - Deleted, Not Applicable**

### **2.3.10 Facilities - Deleted, Not Applicable**

## **2.4 Contract Management**

### **2.4.1 Contractor Personnel Qualifications - Deleted, Not Applicable**

### **2.4.2 Contractor Key Personnel**

See Attachment B

### **2.4.3 Removal or Reassignment of Personnel at the State's Request**

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises the right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

### **2.4.4 Contractor Personnel Location - Deleted, Not Applicable**

### **2.4.5 Contractor Identification**

The Contractor's employees must be clearly identifiable while on State property by wearing a State-issued badge, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

### **2.4.6 Cooperation with Third Parties - Deleted, Not Applicable**

### **2.4.7 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

### **2.4.8 Contractor Return of State Equipment/Resources - Deleted, Not Applicable**



#### **2.4.9 Background Checks**

The State may request to investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check. Affirmation citing previous completion of these checks by the contractor may suffice for this requirement in certain situations.

#### **2.4.10 Compliance With State Policies – Deleted, Not Applicable**

#### **2.5 Subcontracting by Contractor - Deleted, Not Applicable**

#### **2.6 Reserved**

#### **2.7 Performance**

##### **2.7.1 Time of Performance**

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

##### **2.7.2 Service Level Agreements –Deleted, Not Applicable**

##### **2.7.3 Liquidated Damages - Deleted, Not Applicable**

##### **2.7.4 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.



The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workarounds, plans, or other means, including disaster recovery plans.

**2.8 Acceptance of Deliverable(s) - Deleted, Not Applicable**

**2.9 Ownership - Deleted, Not Applicable**

**2.10 State Standards - Deleted, Not Applicable**

**2.11 Confidentiality**

**2.11.1 Confidential Information**

As used in the Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Michigan Freedom Of Information Act (FOIA);
- (b) now available or becomes available to the public without breach of the Contract;
- (c) released in writing by the disclosing party;
- (d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
- (e) publicly disclosed pursuant to federal or state law; or
- (f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

**2.11.2 Protection and Destruction of Confidential Information**

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by the Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under the Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

**2.11.3 Exclusions**

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

**2.11.4 No Obligation to Disclose**

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.



### **2.11.5 Security Breach Notification**

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

## **2.12 Records and Inspections**

### **2.12.1 Inspection of Work Performed**

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to the Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

### **2.12.2 Retention of Records**

(a) The Contractor must retain all financial and accounting records related to the Contract for a period of seven years after the Contractor performs any work under the Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

### **2.12.3 Examination of Records**

The State, upon 10 day notice to the Contractor, may examine and copy any of the Contractor's records that relate specifically to the Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with the Contract.

### **2.12.4 Audit Resolution**

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

### **2.12.5 Errors**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

## **2.13 Warranties**

### **2.13.1 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under the Contract.

(b) The Contract signatory has the authority to enter into the Contract on behalf of the Contractor.



(c) It is qualified and registered to transact business in all locations where required.

(d) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of the Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(e) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value. (f) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract.

### **2.13.2 Warranty of Merchantability**

The Deliverable(s) provided by the Contractor must be merchantable.

### **2.13.3 Warranty of Fitness for a Particular Purpose**

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified by the manufacturer.

### **2.13.4 Warranty of Title**

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

### **2.13.5 Equipment Warranty**

Manufacturer Warranties apply for any product purchased from the Contract (See Section 1.6.4).

### **2.13.6 New Deliverable(s) - Deleted, Not Applicable**

### **2.13.7 Prohibited Products - Deleted, Not Applicable**

### **2.13.8 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

## **2.14 Insurance**

See US Communities/Maricopa County Contract, section 6.2 Insurance Requirements, (Attachment D)

### **2.14.2 Subcontractor Insurance Coverage - Deleted, Not Applicable**

### **2.14.3 Certificates of Insurance and Other Requirements**

See US Communities/Maricopa County contract Insurance Section 6.2.12 (Attachment D)

## **2.15 Indemnification**

### **2.15.1 General Indemnification**

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.



### **2.15.2 Code Indemnification Deleted, Not Applicable**

### **2.15.3 Employee Indemnification**

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. The indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

### **2.15.4 Patent/Copyright Infringement Indemnification**

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under the Contract.

### **2.15.5 Continuing Obligation**

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

### **2.15.6 Indemnification Procedures**

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.



(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

### **2.15.7 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on the Contract.

## **2.16 Termination by the State**

### **2.16.1 Notice and Right to Cure**

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### **2.16.2 Termination for Cause**

(a) The State may fully or partially terminate the Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) If the State partially terminates the Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

(c) If the State terminates the Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.



### **2.16.3 Termination for Convenience**

The State may fully or partially terminate the Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in the Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

### **2.16.4 Termination for Non-Appropriation**

(a) If the Contract extends for more than one fiscal year, continuation of the Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate the Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for the Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates the Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

### **2.16.5 Termination for Criminal Conviction**

The State may terminate the Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract or subcontract.

### **2.16.6 Termination for Approvals Rescinded**

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

### **2.16.7 Rights and Obligations upon Termination**

- (a) If the State terminates the Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
  - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
  - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
  - (iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
  - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and



(vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates the Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates the Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

### **2.16.8 Reservation of Rights**

In the event of any full or partial termination of the Contract, each party reserves all rights or remedies otherwise available to the party.

### **2.16.9 Contractor Transition Responsibilities**

If the Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

### **2.16.10 Transition Payments (Deleted, Not Applicable)**

## **2.17 Termination by the Contractor**

### **2.17.1 Termination**

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate the Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

### **2.18 Stop Work - Deleted, Not Applicable**

### **2.19 Reserved**

## **2.20 Dispute Resolution**

### **2.20.1 General**

(a) The Contractor must submit any claim related to the Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.



### **2.20.2 Informal Dispute Resolution**

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Purchasing Operations, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Purchasing Operations, or such other time as agreed to by the parties, the Director of DTMB-Purchasing Operations will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Purchasing Operations within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Purchasing Operations is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) The section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Purchasing Operations will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

### **2.20.3 Injunctive Relief**

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

### **2.20.4 Continued Performance**

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

## **2.21 Disclosure Responsibilities**

### **2.21.1 Disclosure of Litigation**

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of the Contract, the Contractor must disclose the following to the Contract Administrator:

(i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;

(ii) A parole or probation Proceeding;

(iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and

(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.



(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of the Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform the Contract.

### **2.21.2 Other Disclosures**

The Contractor must notify DTMB-Purchasing Operations within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

### **2.21.3 Call Center Disclosure - Deleted, Not Applicable**

## **2.22 Extended Purchasing**

### **2.22.1 MiDEAL Requirements**

- (a) The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing.
- (b) The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.
- (c) To the extent that MiDEAL Members purchase Deliverable(s) under the Contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.
- (d) The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.

### **2.22.2 Rebate**

As stated within the US Communities/Maricopa County contract, Exhibit A Pricing section 1.0 (Attachment D) the Contractor will remit a rebate on all sales (State and MiDEAL) transacted under the Contract. The rebate structure is defined as follows:

- 1% Annual Rebate on purchases of \$10,000 to \$25,000
- 2% Annual Rebate on purchases of \$25,000 to \$100,000
- 3% Annual Rebate on purchases of over \$100,000

The Contractor will remit the rebate within 90 days after calendar year end.

The Contractor must send the check to the following address:

Department of Technology, Management and Budget  
 Financial Services – Cashier Unit  
 Lewis Cass Building  
 320 South Walnut St.  
 P.O. Box 30681  
 Lansing, MI 48909

### **2.22.3 State Employee Purchase Requirement - Deleted, Not Applicable**

## **2.23 Laws**



### **2.23.1 Governing Law**

The Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

### **2.23.2 Compliance with Laws**

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

### **2.23.3 Jurisdiction**

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non convenes*. The Contractor must appoint agents in the State of Michigan to receive service of process.

### **2.23.4 Nondiscrimination**

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of the Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

### **2.23.5 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

### **2.23.6 Environmental Provision - Deleted, Not Applicable**

### **2.23.7 Freedom of Information**

The Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

### **2.23.8 Workplace Safety and Discriminatory Harassment - Deleted, Not Applicable**

### **2.23.9 Prevailing Wage - Deleted, Not Applicable**

### **2.23.10 Abusive Labor Practices**

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



## **2.24 General Provisions**

### **2.24.1 Bankruptcy and Insolvency**

The State may, without prejudice to any other right or remedy, fully or partially terminate the Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under the Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

### **2.24.2 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and the Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

### **2.24.3 Contract Distribution**

DTMB-Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Purchasing Operations.

### **2.24.4 Permits**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

### **2.24.5 Website Incorporation**

The State is not bound by any content on the Contractor's website unless incorporated directly into the Contract.

### **2.24.6 Future Bidding Preclusion - Deleted, Not Applicable**

### **2.24.7 Antitrust Assignment**

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

### **2.24.8 Disaster Recovery - Deleted, Not Applicable**

### **2.24.9 Legal Effect**

The State is not liable for costs incurred by the Contractor or for payment(s) under the Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

### **2.24.10 Entire Agreement**

The Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in the Contract are incorporated in their entirety and form part of the Contract.

**2.24.11      Order of Precedence**

Any inconsistency in the terms associated with the Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability) identified herein;
- (b) The most recent Statement of Work related to the Contract;
- (c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);
- (d) Any attachment or exhibit to the Contract documents;
- (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
- (f) Bidder Responses contained in any of the RFP documents.

**2.24.12      Headings**

The captions and section headings used in the Contract are for convenience only and may not be used to interpret the scope and intent of the Contract.

**2.24.13      Form, Function and Utility**

If the Contract is for statewide use, but the Deliverable(s) does not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

**2.24.14      Reformation and Severability**

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of the Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

**2.24.15      Approval**

Unless otherwise provided in the Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

**2.24.16      No Waiver of Default**

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

**2.24.17      Survival**

The provisions of the Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of the Contract.



**Attachment A**  
**Product Categories**

1. Lumber
2. Building Materials
3. Flooring
4. Paint
5. Tools
6. Plumbing
7. Electrical
8. Lighting
9. Garden/Cleaning Supplies
10. Kitchen & Bath Appliances
11. Millwork (windows and doors)
12. Window Treatments

NOTE: The State or the Contractor may propose changes to the Contract. During the course of ordinary business, it may become necessary for the State to add or discontinue certain product categories under the Contract. No proposed change may be performed until DTMB Procurement issues a duly executed Contract Change Notice for the proposed change. It is the State's responsibility regarding procurement of any product group under this agreement.



**Attachment B**



**Home Depot Locations and Contact Information**



Home Depot Government Account Manager						
Scott Matthews - 615-681-5470						
Director Strategic Accounts-Government						
Scott_Matthews@homedepot.com						
Home Depot Pro Account Representative	COUNTY	STORE #	STREET #	ADDRESS	CITY / STATE	ZIP
Colleen Weaver	Livingston	2724	8053	Challis Road	Brighton	48116
Cell - 419-819-7066	Livingston	2751	3330	E. Grand River	Howell	48843
Fax - 1-877-981-1268	Saint Clair	2733	4195	24th Ave Lighthouse Point	Fort Gratiot	48059
Colleen_A_Weaver@homedepot.com	Shiawassee	2772	2205	East M21	Owosso	48867
17197 N Laurel Park Drive, Building 3, Suite 400	Washtenaw	2721	3300	Carpenter Road	Ypsilanti	48197
Livonia, MI 48152	Wayne	2703	39825	Ford Road	Canton	48187
	Wayne	2704	39500	W. 7 Mile Road	Northville	48167
	Wayne	2709	21100	Penn Street	Taylor	48180
	Wayne	2710	25451	Michigan Avenue	Dearborn Hts	48125
	Wayne	2718	20300	Kelly Road	Harper Woods	48225
	Wayne	2738	23300	W. Allen	Woodhaven	48183
	Wayne	2742	13500	Middlebelt Drive	Livonia	48150
	Wayne	2744	45900	Michigan Avenue	Canton	48188
	Wayne	2757	5951	Mercury Drive	Dearborn	48126
	Wayne	2762	47725	Five Mile Road	Plymouth	48170
	Wayne	2781	18700	Meyers Road	Detroit	48235
	Wayne	2789	11100	Telegraph Road	West Taylor	48180
	Wayne	6821	3163	Fairlane Dr.	Allen Park	48101
Home Depot Pro Account Representative	COUNTY	STORE #	STREET #	ADDRESS	CITY / STATE	ZIP
Don Ten Eyck	Allegan	2771	1227	M89	Plainwell	49080
Cell - 989-572-8551	Berrien	2768	2075	Pipestone Road	Benton Harbor	49022
Fax - 1-877-981-1274	Branch	2766	825	E. Chicago Street	Coldwater	49036
Donald_G_TenEyck@homedepot.com	Eaton	2725	936	S. Waverly Road	Lansing	48917
17197 N Laurel Park Drive, Building 3, Suite 400	Jackson	2770	1400	N. Wisner Road	Jackson	49202
Livonia, MI 48152	Kalamazoo	2728	6685	Westnedge	Portage	49002
	Kent	2715	4646	28th Street, S. E.	Grand Rapids	49512
	Kent	2720	2727	Alpine Avenue	Walker	49544
	Kent	2748	4900	Wilson Avenue SW	Grandville	49418
	Kent	2761	257	54th Street S. W.	Wyoming	49548
	Muskegon	2754	2699	Henry Street	Roosevelt Park	49441
	Okemos	2723	1749	Newman Drive	Okemos	48864
	Ottawa	2780	900	Jackson Street	Grand Haven	49417
	Saint Joseph	2785	1301	South US 131	Three Rivers	49093
Home Depot Pro Account Representative	COUNTY	STORE #	STREET #	ADDRESS	CITY / STATE	ZIP
Thomas Abbott	Alpena	2760	1348	M-32	Alpena	49707
Cell - 248-686-4241	Bay	2739	3860	State Street	Bay City	48706
Fax - 1-877-959-0371	Emmet	2755	1700	Anderson	Petoskey	49770
THOMAS_J_ABBOTT@homedepot.com	Genesee	2716	4380	W. Corunna Road	Flint Twp	48532
17197 N Laurel Park Drive, Building 3, Suite 400	Genesee	2717	4245	E. Court Street	Burton	48519
Livonia, MI 48152	Genesee	2741	15255	Silver Parkway	Fenton	48430
	Genesee	2763	1222	West Hill Road	Mundy Twp	48507
	Genesee	2765	5300	W. Pierson Road	Flushing	48433
	Grand Traverse	2726	2522	Crossing Circle	Traverse City	49684
	Isabella	2732	5650	E. Pickard	Mt. Pleasant	48858
	Lapeer	2736	1500	Summit Street	Lapeer	48446
	Mason	2767	3865	West US Hwy 10	Ludington	49431
	Midland	2747	1100	Joe Mann Blvd	Midland	48642
	Ogemaw	2782	2892	Cook Road	West Branch	48661
	Otsego	2759	1381	Main Street	Gaylord	49735
	Roscommon	2769	2241	West Houghton Lake Dr	Houghton Lake	48629
	Saginaw	2714	3132	Bueker Drive	Saginaw	48604
	Saginaw	2779	8670	Gratiot Road	West Saginaw	48609
	Wexford	2752	3786	S. US 131	Cadillac	49601
Home Depot Pro Account Representative	COUNTY	STORE #	STREET #	ADDRESS	CITY / STATE	ZIP
Larry Oehmke	Macomb	2702	25879	Hoover Road	Warren	48089
Cell - 586-202-0701	Macomb	2707	20500	13 Mile Road	Roseville	48066
Fax - 877-959-0447	Macomb	2708	45301	N. Point Blvd.	Utica	48315
Lawrence_a_Oehmke@homedepot.com	Macomb	2734	51335	Gratiot	Chesterfield Twp	48051
17197 N Laurel Park Drive, Building 3, Suite 400	Macomb	2740	37000	Van Dyke Avenue	Sterling Hts	48312
Livonia, MI 48152	Macomb	2758	8760	26 Mile Road	Shelby Twp	48316
	Macomb	2776	20777	Hall Road	Macomb Twp	48044
Home Depot Pro Account Representative	COUNTY	STORE #	STREET #	ADDRESS	CITY / STATE	ZIP
Paul Martens	Oakland	2701	545	South Telegraph	Pontiac	48341
Cell - 248-3889364	Oakland	2706	1177	Coolidge Hwy	Troy	48084
Fax - 248-926-9884	Oakland	2711	29801	Southfield Road	Southfield	48076
Paul_martens@homedepot.com	Oakland	2722	355	Haggerty Road	Commerce Twp	48390
17197 N Laurel Park Drive, Building 3, Suite 400	Oakland	2727	225	West Avon Road	Rochester Hills	48307
Livonia, MI 48152	Oakland	2729	9078	Highland Road	White Lake	48386
	Oakland	2731	660	W. 12 Mile Road	Madison Heights	48071
	Oakland	2737	47950	Grand River Avenue	Novi	48374
	Oakland	2743	2600	S. Lapeer Road	Lake Orion	48360
	Oakland	2764	4150	Joslyn Road	Auburn Hills	48326
	Oakland	2773	32525	Northwestern Highway	Farmington Hills	48334



Attachment C, Participating Addendum

**Participating Addendum to  
U.S. Communities Purchasing Alliance / Maricopa County, Phoenix, AZ  
Contract Number 11019 Between Home Depot U.S.A., Inc  
And  
State of Michigan, Contract Number: 071B2200178**

1. Scope:

Within the State of Michigan, state facilities, counties, cities and any political sub-division or any entity funded in part with tax dollars are eligible purchasers and authorized to purchase products and services under the terms of this price agreement, in lieu of conducting a separate competitive selection process. These purchases will be made by the State at the Home Depot stores. Home Depot will sell products to Company based upon the everyday low retail price available at the time of purchase and the incentives identified the US Communities contract.

2. Changes:

- a.) Prices are to be FOB Origin at local Home Depot stores, with delivery charges on a case-by-case basis. Title to goods and the risk of loss / damage transfers from seller to buyer upon transaction. A form of payment is required at the time of transaction.
- b.) This agreement shall be governed by the laws of the State of Michigan. Venue for any claims, disputes, or action concerning an order placed under this contract shall be in the State of Michigan.
- c.) The contractor shall upon request provide an electronic detailed yearly report on all sales based upon registered accounts made against this agreement within the State of Michigan to the State's primary contact below and based upon registered purchasers' information identified by the registrant under this agreement. The report file format shall be Microsoft Excel compatible format. The reports may include the customer name and address (based upon registrants input information), product description, quantity, unit and extended prices.

3. Primary contact:

The primary participating entity contact, for participation by "Customers" as defined in Scope above, for this participating addendum is as follows:

Participating Entity Name:	State of Michigan
Contact Name:	Klatra Pickett
Address:	Stevens T. Mason Building-2 <sup>nd</sup> Floor 530 West Allegan Street P.O. Box 30026 Lansing, MI 48909
Telephone:	(517)-335-0046
Fax:	(517) 335-0046
E-mail:	pickettk@michigan.gov



The primary contractor contact for this participating addendum is as follows:

Contractor:	Home Depot U.S.A. Inc.
Contact name:	Richard Nyberg
Address:	2455 Paces Ferry Rd NW Atlanta, GA 30339
Telephone:	770-384-3772
Fax:	770-384-2229
E-Mail	richard_nyberg@homedepot.com
EIN Number:	58-1853319

This Addendum and the US Communities contract together with its exhibits/addendums, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with it exhibits shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the US Communities contract shall prevail and govern in the case of any such inconsistent or additional terms. This agreement shall consist of the following component parts:

- This Instrument;
- Maricopa County Contract 11019 in association with U. S. Communities effective 8/1/11;

This instrument, together with the other documents enumerated above, which said documents are as fully a part of this Agreement as if hereto attached or herein repeated, form the Agreement. In the event that any provision or any component part of this Agreement conflicts with any provision of any other component part, the provision of the component part first enumerated in this section above shall govern, except as otherwise specifically stated.

**IN WITNESS WHEREOF**, the parties have executed this Addendum as of the date of execution by Contractor below.

**State of Michigan**

**Home Depot U.S.A. Inc.**

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

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

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

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**Attachment D, U.S. Communities Contract Information****CONTRACT PURSUANT TO RFP**

SERIAL 11019-RFP

This Contract is entered into this sixth (6<sup>th</sup>) day of July, 2011 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Home Depot U.S.A. Inc, a Delaware corporation ("Contractor") for the purchase of Retail Maintenance, Repair and Operating (MRO) commodities and related services.

**1.0 CONTRACT TERM:**

- 1.1 This Contract is for a term of three (3) years, beginning on the first (1<sup>st</sup>) day of August, 2011 and ending the thirty-first (31<sup>st</sup>) day of July, 2014.
- 1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of three (3) years, (or at the County's sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least thirty (30) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

**2.0 FEE ADJUSTMENTS:**

Retail prices or discounts off marked prices at point-of-sale (POS) are permitted to be adjusted once per calendar year after the initial award, in conjunction with the Contractor's annual catalog publication date.

Any requests for other reasonable pricing adjustments shall be submitted sixty (60) days prior to the catalog publication date. If County agrees to the adjusted discounts, County shall issue written approval of the changes.

**3.0 PAYMENTS:**

- 3.1 As consideration for performance of the duties described herein, County shall pay Contractor the sums stated in Exhibit "A."
- 3.2 For non-procurement card transactions, payment shall be made upon the County's receipt of a properly completed invoice.

**3.3 INVOICES (NON-PROCUREMENT CARD TRANSACTIONS):**

3.3.1 The Contractor shall submit detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:

- Company name, address and contact
- County bill-to name and contact information
- Contract serial number
- County purchase order number



SERIAL 11019-RFP

- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity
- Description of service provided
- Pricing per unit of service
- Freight (if applicable)
- Extended price
- Total Amount Due

- 3.3.2 Problems regarding billing or invoicing shall be directed to the County as listed on the Purchase Order.
- 3.3.3 Payment shall be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site ([www.maricopa.gov/finance/vendors](http://www.maricopa.gov/finance/vendors)).
- 3.3.4 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

#### 4.0 AVAILABILITY OF FUNDS:

- 4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.
- 4.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

#### 5.0 DUTIES:

- 5.1 The Contractor shall perform all duties stated in Exhibit "B", or as otherwise directed in writing by the Procurement Officer.

#### 6.0 TERMS and CONDITIONS:

##### 6.1 INDEMNIFICATION:

- 6.1.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all 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, mistakes or malfeasance relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is caused by any negligent acts, errors, omissions



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or mistakes in the performance of this Contract by the Contractor, as well as any person or entity for whose acts, errors, omissions, mistakes or malfeasance Contractor may be legally liable.

6.1.2 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.

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

6.2 INSURANCE REQUIREMENTS:

6.2.1 Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of A-, VII or higher. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

6.2.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

6.2.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

6.2.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

6.2.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6.2.6 County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance certificates. County shall not be obligated to review policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

6.2.7 Notwithstanding anything to the contrary contained herein, **CONTRACTOR** shall have the right to self-insure part or all of any of the insurance it is required to maintain hereunder in its sole discretion so long as **CONTRACTOR** maintains a net worth of not less than One Hundred Million (\$100,000,000) Dollars. Such net worth shall be documented to **COUNTY** and **COUNTY** shall be advised in writing in the event such net worth requirement is not met. In the event that **CONTRACTOR** elects to self-insure all or any part of any risk that would be insured under the policies and limits described herein, and an event occurs where insurance proceeds would have been available but for the election to self-insure, **CONTRACTOR** shall make funds available to the same extent that they would have been available had such insurance policy been carried, unless specifically provided to the contrary herein.



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6.2.8 The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

6.2.9 Commercial General Liability.

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

6.2.10 Automobile Liability.

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

6.2.11 Workers' Compensation.

6.2.11.1 Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

6.2.11.2 Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

6.2.12 Certificates of Insurance.

6.2.11.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

6.2.11.1.1 In the event any insurance policy (ies) required by this Contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

6.2.11.1.2 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

6.2.13 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.



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**6.3 WARRANTY OF SERVICES:**

- 6.3.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.
- 6.3.2 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

**6.4 INSPECTION OF SERVICES:**

- 6.4.1 The Contractor shall provide and maintain an inspection system acceptable to County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to County during contract performance and for as long afterwards as the Contract requires.
- 6.4.2 County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. County shall perform inspections and tests in a manner that will not unduly delay the work.
- 6.4.3 If any of the services do not conform with Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at an increase in Contract amount. When the defects in services cannot be corrected by re-performance, County may:
  - 6.4.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
  - 6.4.3.2 Reduce the Contract price to reflect the reduced value of the services performed.
- 6.4.4 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:
  - 6.4.4.1 By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by County that is directly related to the performance of such service; or
  - 6.4.4.2 Terminate the Contract for default.

**6.5 PROCUREMENT CARD ORDERING CAPABILITY:**

The County may determine to use a MasterCard Procurement Card, to place and make payment for orders under the Contract.

**6.6 INTERNET ORDERING CAPABILITY:**

The County intends, at its option, to use the Internet to communicate and to place orders under this Contract.



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## 6.7 NOTICES:

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

For County:

Maricopa County  
Department of Materials Management  
Attn: Director of Purchasing  
320 West Lincoln Street  
Phoenix, Arizona 85003-2494

For Contractor:

Government and National Accounts  
Contract Manager  
2455 Paces Ferry Road  
Atlanta, GA 30339

## 6.8 REQUIREMENTS CONTRACT:

6.8.1 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 County identifies a need and issues a purchase order or a written notice to proceed.

6.8.2 County 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 County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County 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.

6.8.3 Purchase orders will be cancelled in writing.

## 6.9 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County 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 County. 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.

## 6.10 TERMINATION FOR DEFAULT:

6.10.1 In addition to the rights reserved in the Contract, the County 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.

6.10.2 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract.

6.10.3 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.



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6.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County 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 County 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 County 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 County from any other party to the contract arising as the result of the Contract.

6.12 OFFSET FOR DAMAGES;

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

6.13 ADDITIONS/DELETIONS OF SERVICE:

The County 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 County.

6.14 RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the District and the Contractor.

6.15 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 County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

6.16 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

6.17 RETENTION OF RECORDS:

6.17.1 The Contractor agrees to retain all financial books, records, and other documents 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 longer. 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.

6.17.2 If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor



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shall reimburse Maricopa County for the services not so adequately supported and documented.

6.18 AUDIT DISALLOWANCES:

6.18.1 If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

6.19 ALTERNATIVE DISPUTE RESOLUTION:

6.19.1 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:

6.19.1.1 Render a decision;

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

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

6.19.2 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.

6.19.3 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.

6.20 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.



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## 6.21 RIGHTS IN DATA:

The County shall own 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.

## 6.22 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.

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

6.23.1 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.

6.23.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 3.18.1 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.

6.23.3 This section is applicable to services provided in the state of Arizona only. The Contractor shall comply with similar statutes that may have been enacted in other states.

## 6.24 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

6.24.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. 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.

6.24.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County 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.



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## 6.25 CONTRACTOR LICENSE REQUIREMENT:

- 6.25.1 The Respondent shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Respondent shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Materials Management and the using agency of any and all changes concerning permits, insurance or licenses.
- 6.25.2 Respondents furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. A Respondent is not relieved of its obligation to possess the required licenses by subcontracting of the labor portion of the Contract. Respondents are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, at (602) 542-1525 to ascertain licensing requirements for a particular contract. Respondents shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

## 6.26 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

- 6.26.1 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:
- 6.26.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
  - 6.26.1.2 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;
  - 6.26.1.3 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
  - 6.26.1.4 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.
- 6.26.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contract.
- 6.26.3 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.

## 6.27 PRICES:

Contractor warrants that prices extended to County under this Contract are no higher than those paid by any other non-federal government customer for these or similar services.



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## 6.28 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

## 6.29 ORDER OF PRECEDENCE:

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

## 6.30 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.

## 6.31 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.

## 6.32 INCORPORATION OF DOCUMENTS:

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

6.32.1 Exhibit A, Pricing;

6.32.2 Exhibit B, Scope of Work;

6.32.3 Exhibit C, FEMA and ARRA Terms and Conditions



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

CONTRACTOR

*J.T. Reeves*  
AUTHORIZED SIGNATURE

J.T. Reeves, Vice President Pro Business  
PRINTED NAME AND TITLE

2455 Paces Ferry Road Atlanta, GA 30339  
ADDRESS

7-8-11  
DATE

MARICOPA COUNTY

*[Signature]*  
CHAIRMAN, BOARD OF SUPERVISORS

JUL 19 2011  
DATE

ATTESTED:

CLERK OF THE BOARD 070611

JUL 19 2011  
DATE

APPROVED AS TO FORM:

*[Signature]*  
LEGAL COUNSEL

July 15 2011  
DATE



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EXHIBIT A

PRICING

SERIAL 11019-RFP  
 NIGP CODE: 45041  
 RESPONDENT'S NAME: Home Depot U.S.A., Inc.  
 COUNTY VENDOR NUMBER : 2011000855 0  
 ADDRESS: 2455 Paces Ferry Road  
Atlanta, GA 30339  
 P.O. ADDRESS: Each local The Home Depot stores  
 TELEPHONE NUMBER: 866-589-0690  
 FACSIMILE NUMBER: 866-589-0691  
 WEB SITE: www.homedepot.com  
 CONTACT (REPRESENTATIVE): Richard Nyberg  
 REPRESENTATIVE'S E-MAIL ADDRESS: richard\_nyberg@homedepot.com

	<u>YES</u>	<u>NO</u>	<u>REBATE</u>
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

PAYMENT TERMS: NET 30 DAYS (See Note)

**Note: Net 30 is for Home Depot Account transactions only. Payment is required at the time of each transaction, for all transactions**

1.0 PRICING:

- 1.1 Discount off marked price at POS N/A %
- 1.2 Annual Issue Date of Catalog N/A
- 1.3 Do you offer a Rebate in lieu of a discount? Yes (Y/N)
  - At least \$10,000 to \$25,000 Annual Net Sales (Pretax) = 1% Rebate
  - At least \$25,000 to \$100,000 Annual Net Sales (Pretax) = 2% Rebate
  - Over \$100,000 Annual Net Sales (Pretax) = 3% Rebate