

SECOND AMENDMENT TO THE
CONTRACT BETWEEN THE CITY OF NEW BRAUNFELS AND HD SUPPLY
FACILITIES MAINTENANCE, LTD.

This Second Amendment is made by and between the City of New Braunfels, a home-rule City and a municipal corporation of the State of Texas, hereinafter referred to "CITY", and HD Supply Facilities Maintenance, Ltd., a Florida limited partnership, duly authorized to transact business in Texas ("Company"), acting by and through its officers:

W I T N E S S E T H:

WHEREAS, on January 31, 2005, The Home Depot Supply, Inc. entered into a Performance Agreement with the NBEDC (formerly the NBIDC) that promised creation of 120 jobs in the first year of operation of its facility in New Braunfels at 1511 E. Common St., and 343 jobs by the end of the tenth year of operation (Exhibit A); and

WHEREAS, on December 5, 2006, the Contract was amended to increase the number of jobs from 343 to 390, it included the Extended Rebate Period provision, and changed the name of the Company from The Home Depot Supply, Inc. to HD Supply Facilities Maintenance, Ltd. (Exhibit B); and

WHEREAS, on December 4, 2006, the City of New Braunfels entered into a Chapter 380 Agreement ("Contract") with the Company that reflected the same 390 job commitment, and other similar obligations as those contained in the Performance Agreement with the NBEDC; and

WHEREAS, the Contract was automatically renewed by its terms from December 5, 2016 for an additional ten years with the City continuing to rebate to the Company its share of sales tax until December 5, 2026; and

WHEREAS, by the First Amendment executed in 2020 (Exhibit C), the New Braunfels Economic Development Corporation assumed a portion of the City's obligation to Company under the original contract so that the City of New Braunfels could launch and fund a COVID-19 Small Business Resource Grant Program, as a source of capital for New Braunfels small businesses that experienced significant business interruptions due to the COVID-19 pandemic; and

WHEREAS, the parties have each fully performed all of their respective obligations pursuant to the Contract, as amended, through the date of this Second Amendment; and

WHEREAS, the Company has indicated that their business processes may change, effective February 1st, 2022, in such a way that intrastate sales may no longer be sourced to the New Braunfels customer control center; and

WHEREAS, given the Company's decision, the Company has offered to abate the sales tax sharing agreement effective December 1, 2021, for the CITY's financial benefit in advance of the Company's change in business process; and

WHEREAS, the parties now seek to enter into a Second Amendment to the Contract, as amended, which will abate certain obligations of the parties until the agreement terminates by its terms on December 5, 2026, or the parties mutually agree in writing to cease the abatement, whichever occurs first.

NOW, THEREFORE, in consideration of the payment of \$10.00 and other good and valuable consideration including without limitation the foregoing recitals and of their respective covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged by the parties, iCITY and Company agree as follows:

SECOND AMENDMENT:

1. The following amendments are incorporated into and made part of the original agreement (Exhibit A) and all amendments thereto. By this amendment, the parties agree to abate all the obligations by either party effective December 1, 2021, SAVE AND EXCEPT for the City's obligation to pay the Rebate to the Company earned through December 1, 2021, when it is received from the Comptroller subsequently. Without limiting the scope of the abatement, the parties agree to abate paragraphs 3 and 4 of the Contract until the Contract terminates on December 5, 2026, or until the parties mutually agree by written agreement to resume their respective obligations, whichever occurs sooner. All obligations by either party are hereby abated effective December 1, 2021, including, without limitation the following City obligations:
 3. City agrees to pay Chapter 380 payments as follows: The City will rebate, on a monthly basis and after receiving the Report, confirmation from the State and any State audit adjustments, fifty percent (50%) of the sales tax revenue received by the City of New Braunfels from the Comptroller which is verifiably connected to Home Depot's business activities within the City of New Braunfels described in Paragraph 1 above (the "Rebate").
 4. The City agrees that it will continue the Rebate for a period of ten years ("Rebate Period"), commencing on the date the City first receives sales tax revenue from the Comptroller relating to the activities covered by this Agreement, or on April 1, 2007, whichever occurs earlier (Commencement Date"). Notwithstanding the foregoing, if the amount of sales tax revenue generated by this Agreement should exceed \$10 million during the Rebate Period, such Rebate Period shall be automatically extended for an additional ten (10) year period without further action by either party ("Extended Rebate Period"). However, should the state legislature enact future legislation which would limit the duration of the Extended Rebate Period, then such Extended Rebate Period shall be automatically modified by such legislation as applicable without further action by either party. However, in no event shall the initial Rebate Period be subject to any such modification.
2. Except as modified by this amendment, the Contract, as amended, and previously extended through December 5, 2026, and all other terms, covenants, conditions, and agreements contained therein not modified above shall in all respects remain unchanged and continue in full force and effect.

IN WITNESS WHEREOF, this amendment is executed in multiple original counterparts, but being one and the same instrument, effective as of the ____ day of _____ 2021.

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

APPROVED AS TO FORM:

Valeria Acevedo, *City Attorney*

HD Supply GP & Management, Inc.

By: _____