

FORMAL COOPERATIVE PURCHASE AGREEMENT

THIS AGREEMENT (Agreement) is made and entered into EFFECTIVE _____, by and between CITY OF FRESNO, a California municipal corporation (City), and W.W. Grainger, Inc. (Vendor).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. The Charter for the City allows for cooperative purchase agreements for materials, supplies, equipment, and public work of improvement. The City is allowed to piggyback an existing government agency's agreement, under Fresno City Charter 1208. The parties agree the Vendor was the lowest responsive and responsible bidder for Invitation for Bid (IFB) issued by the City of Tucson RFP #192163. The IFB is attached hereto as **Exhibit A** and is incorporated herein by reference. The Parties agree that the Vendor has entered a Cooperative Purchase Contract for Maintenance, Repair and Operations (MRO) Supplies, Parts, Equipment, Materials and Related Services with the City of Tucson through OMNIA Partners Public Sector (OMNIA Partners) (Original Government Contract).

2. Vendor's Obligation. Vendor shall provide those services and carry out that work described in the Original Government Contract, which is attached hereto as **Exhibit B** and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

3. City's Obligation. Vendor's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee Six Hundred Thousand (\$600,000) per year, plus annual CPI increase. City shall make to the Vendor those payments described in **Exhibits A and B**, subject to all the terms and condition contained or incorporated herein.

4. This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect for an initial term of five (5) years. Thereafter, if mutually agreed upon, the parties have the option to extend this agreement in one-year increments, for up to two additional years. Any extension must be provided in writing.

5. Notwithstanding the requirements that the Original Government Contract is fully binding on the Parties, the parties have agreed to modify certain non-material provisions of the Original Government Contract as applied to this Agreement between the Vendor and the City, as follows:

- a) City's Insurance and Indemnity provisions attached as **Exhibit C**.
- b) Address change for the City: Notwithstanding the address and contract information for the government entity as set out in **Exhibit B**, the Vendor agrees that notices and invoices will be sent to:

City of Fresno
Attention: Melissa Perales
Purchasing Manager
2101 G Street, Bldg. A
Fresno, CA 93706
Phone: (559) 621-1157
FAX: (559) 457-1564

c) Notwithstanding anything in **Exhibits, A and B** to the contrary, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

d) All other provisions in the Original Government Contract are fully binding on the parties and will represent the agreement between the City and the Vendor.

[Signatures follow on the next page.]

EXHIBIT A
Information For Bids

EXHIBIT B
Original Government Contract

EXHIBIT C
City's Insurance and Indemnity

INDEMNIFICATION

To the furthest extent allowed by law, Vendor does hereby agree to indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by the City, the Vendor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation expenses, and costs to enforce this agreement), arising or alleged to have arisen out of performance of any work for City by the Vendor. The Vendor's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the gross negligence, or willful misconduct, of the City or any of its officers, officials, employees, agents or authorized volunteers.

INSURANCE REQUIREMENTS

Throughout the life of this Agreement, Vendor shall pay for and maintain in full force and effect all insurance as required herein, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

The fact that insurance is obtained by the Vendor shall not be deemed to release or diminish the liability of the Vendor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Vendor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Vendor, or any of its board, officers, employees, agents, volunteers, invitees, suppliers, contractors, consultants or subcontractors.

If Vendor should subcontract all or any portion of the work to be performed for the City, Vendor shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this Agreement.

This section shall survive termination or expiration of this agreement.

MINIMUM SCOPE OF INSURANCE

(a) Throughout the life of this Agreement, VENDOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of

California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, VENDOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to VENDOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve VENDOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by VENDOR shall not be deemed to release or diminish the liability of VENDOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by VENDOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of VENDOR, vendors, suppliers, invitees, VENDORS, subcontractors, consultants or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to VENDOR'S profession.

MINIMUM LIMITS OF INSURANCE

VENDOR, or any party the VENDOR subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY:

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY:

\$1,000,000 per accident for bodily injury and property damage.

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.

4. EMPLOYER'S LIABILITY:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event VENDOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

VENDOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and VENDOR shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

(ii) VENDOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. VENDOR shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims relating to this Agreement, VENDOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of VENDOR'S insurance and shall not contribute with it. VENDOR shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: VENDOR and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been

given to CITY. VENDOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, VENDOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, VENDOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by VENDOR shall not be deemed to release or diminish the liability of VENDOR, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by VENDOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of VENDOR, its principals, officers, agents, employees, persons under the supervision of VENDOR, consultant, suppliers, invitees, contractor, subcontractors, or anyone employed directly or indirectly by any of them.

PROVIDING OF DOCUMENTS - VENDOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, VENDOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of VENDOR shall also be required to provide all documents noted herein.

SUBCONTRACTORS - If VENDOR subcontracts any or all of the services to be performed under this Agreement, VENDOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, VENDOR shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and VENDOR shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with VENDOR, and CITY, prior to commencement of any work by the subcontractor.