

**COOPERATIVE PROCUREMENT CONTRACT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
W.W. GRAINGER, INC.  
FOR MAINTENANCE REPAIR AND OPERATIONS SUPPLIES, PARTS EQUIPMENT  
AND MATERIALS**

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**I. RECITALS**

A. San Diego Municipal Code (SDMC) section 22.3208 authorizes the City of San Diego, a municipal corporation (City), to use a cooperative procurement contract awarded by another agency where the City's Purchasing Agent certifies in writing that the cooperative procurement contract is in the City's best interests, to the City's economic advantage, and the agency's contract was awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.

B. The City of Tucson (Agency) in conjunction with Omnia Partners issued a request for proposals, No. 240078, for Maintenance Repair and Operations (MRO) Supplies, Parts, Equipment and Materials (Solicitation) by posting the Solicitation in the following newspapers: Deseret News (Utah) on February 9, 2024 The Daily Journal of Commerce (Oregon) on February 9, 2024, The Herald News (Illinois) on February 9, 2024 and The Arizona Business Gazette (Arizona) on February 15, 2024. In addition, Agency posted the Solicitation on their website and the Omnia Partners' website. The deadline for submission of sealed proposals in response to the Solicitation was March 28, 2024 at 2:00 PM local Arizona time.

C. On October 2<sup>nd</sup>, 2024, based on the results of the competitive process, Agency awarded a contract with W.W. Grainger (Contractor) and executed City of Tucson Contract No. 240078-01, Maintenance Repair and Operations (MRO) Supplies, Parts, Equipment and Materials with Contractor, identified as RFP No. 240078-01 and referred to as "Agency Agreement" herein.

D. Agency and Contractor agreed that effective date of Agency Agreement is January 1, 2025.

E. On 11/25/24 the City's Purchasing Agent certified in writing that the Agency Agreement meets the requirements set forth in SDMC section 22.3208. The parties agree and acknowledge that no consulting services will be procured under this Contract as defined in SDMC section 22.3003.

F. Contractor has agreed to provide to City the same pricing offered to Agency for MRO supplies, Parts, Equipment and Materials consistent with the terms and conditions in the Agency Agreement except as modified herein.

**II. GENERAL PROVISIONS**

In consideration of the above recitals and mutual covenants and conditions set forth in this Contract, and for good and valuable consideration, the sufficiency of which is hereby

acknowledged, City and Contractor hereby agree to the terms and conditions as set forth in the Agency Agreement with the exception of the following modifications:

1. Incorporation. This Contract shall fully incorporate the Recitals which the parties agree are true and correct.

2. Effective Date. This Contract is effective on the last date that this Contract is signed by City and Contractor and approved by the City Attorney through December 31, 2027 with up to an additional two (2) additional one (1) year terms, which may be exercised at City's sole and absolute discretion subject to the restrictions in San Diego Charter section 99. City, through the Mayor or his designee, may exercise the option by written notice to Contractor sent thirty (30) days prior to the expiration of the current term. Contractor may not decline the option to renew. The total duration of this Contract, including the exercise of any options under this section, shall not exceed five (5) years without approval of the City of San Diego Council by Ordinance.

3. Early Termination. Contractor must provide written notice within ten (10) calendar days of the date in which the Agency Agreement is terminated to the Contract Administrator identified in Section III, below. Such written notice must explain the basis for termination and the date upon which the termination is effective. Early termination of the Agency Agreement by Agency or Contractor, or failure by Agency to exercise an option to extend the Agency Agreement, shall not in any way affect the existence of this Contract.

4. Compliance with Controlling Laws. Contractor shall comply with all applicable local, state, and federal laws and regulations. In addition, Contractor shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

5. Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

6. Jurisdiction and Venue. The venue for any suit concerning this Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

7. Modifications. The modifications described in Exhibit 2, which is attached hereto and incorporated herein by reference, shall affect only the page(s) and section(s) and terms and conditions referred to therein. All other terms and conditions of the Agency Agreement shall be in full force and effect as to City and Contractor as incorporated in this Contract.

### **III. CONTRACT ADMINISTRATOR**

1. Contract Administrator. The Department of Purchasing and Contracting (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Buck Osegueda, Senior Procurement Contracting Officer

1200 Third Avenue, Suite 200, San Diego, CA 92101  
619-236-6065  
Sosegueda@sandiego.gov

2. Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Requesting Department. Proper notice shall be effective on the date of personal delivery or five (5) days after deposit in the United States postal mailbox. Notices shall be sent to:

Purchasing & Contracting Department  
Attention: Buck Osegueda  
1200 Third Avenue – Suite 200  
San Diego, CA 92101  
Sosegueda@sandiego.gov  
619-236-6065

#### **IV. COMPENSATION**

1. City shall pay Contractor for the goods or services provided in accordance with this Contract in an amount not to exceed \$3,000,000. Contractor is not obligated to provide goods or services in excess of this amount, and does so at its own risk, unless this Contract is amended in writing duly executed by City and Contractor increasing this not-to-exceed amount.

2. Annual Appropriation of Funds. Contractor acknowledges that the contract term may extend over multiple City fiscal years, and agrees that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. City may terminate the Contract if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by the City Council.

#### **V. CONTRACT**

1. Contract Documents. This Contract consists of this Contract and all exhibits listed below, and incorporated by reference in full herein, which together contain all the terms and conditions of this Contract (collectively referred to as “Contract Documents”).

- 1.1 Agency Agreement, including exhibits contained therein as they are applicable (Exhibit 1);
- 1.2 Modifications to the Agency Agreement (Exhibit 2);
- 1.3 Solicitation (Exhibit 3);
- 1.4 Contractor’s Response to Solicitation (Exhibit 4).

2. Contract Interpretation. The Contract Documents completely describe the goods and/or services to be provided. Contractor shall provide any goods or services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry trade meaning and are used to describe goods or services will be interpreted in accordance with that meaning unless a different definition has been provided in the Contract Documents.

3. Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, City and Contractor will use the order of precedence as set forth below. The document in highest order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1<sup>st</sup> This Contract
- 2<sup>nd</sup> Agency Agreement, as modified by Exhibit 2 “Modifications to the Agency Agreement”
- 3<sup>rd</sup> Contractor’s Response to Solicitation
- 4<sup>th</sup> Solicitation and any Addenda

4. Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties executed the same page.

5. Public Agencies. Other public agencies as defined by California Government Code section 6500 may choose to use the terms of this Contract, subject to Contractor’s acceptance. City is not liable or responsible for any obligations related to a subsequent agreement between Contractor and another public agency.

## **VI. CITY’S ADDITIONAL TERMS**

1. Wage Requirements: The City’s Living Wage Ordinance does not apply to cooperative procurement contracts. This Contract is exempt from the City’s Living Wage Ordinance. as outlined in San Diego Municipal Code § 22.4215(a)(5).

2. Drug-Free Workplace Certification. Contractor shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Contract by reference.

3. ADA Certification. Contractor shall comply with the City’s Americans with Disabilities Act Compliance/City Contracts requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference.

4. Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate

in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Contractor and any subcontractors or suppliers shall contain this language.

5. Compliance with the City's Equal Employment Opportunity Outreach Program (EOCP): Contractor shall comply with the City's EOCP requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime Contractor liable for any discriminatory practice of its subcontractors.

6. Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against Contractor up to and including contract termination, debarment, and other sanctions.

7. Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate and to provide a copy to the City before any contract is executed.

8. Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

9. Noise Abatement. Contractor shall not operate, conduct, or construct within City's jurisdictional limits in violation the City's Noise Abatement Ordinance codified in SDMC sections 59.5.0101 through 59.5.0301.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

W.W. GRAINGER INC.

By: Liz Tolles

Name: Liz Tolles

Title: Sr. Government Account Manager

Date: January 14, 2025

THE CITY OF SAN DIEGO

By: C. Abarca

Name: Claudia C. Abarca

Title: Director, Purchasing & Contracting

Date: January 17, 2025

Approved as to form this 21<sup>st</sup> day of  
January, 2025.

HEATHER FERBERT, City Attorney

By: Mark M. Imada  
Mark M. Imada (Jan 21, 2025 13:33 PST)

Deputy City Attorney

Print Name: Mark M. Imada

**EXHIBIT 1: AGENCY AGREEMENT**

## EXHIBIT 2: MODIFICATIONS TO THE AGENCY AGREEMENT

### 1. References.

1.1 All references to “City of Tucson” or “City” in the Agency Agreement shall mean and be understood to be “City of San Diego”.

1.2 All references to “Arizona Standard Time” in the Agency Agreement shall mean and be understood to be “Pacific Time”.

1.3 All references to “Business Services Director” in the Agency Agreement shall mean and be understood to be “Purchasing Agent”.

2. Agency Contract paragraph D.11 – CONFIDENTIAL INFORMATION. Shall be deleted in its entirety.

3. Paragraph D.13 of the Agency Contract titled “CERTIFICATION OF NONCOLLUSION; CONFLICTS OF INTEREST” shall be removed in its entirety and replaced with the following:

3.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, et. seq. and 81000, et. seq., and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City’s request, Contractor shall submit the necessary documents to City.

3.2 Contractor’s Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

3.3 Contractor’s Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4. Agency Contract paragraph D.16 – VENDOR REGISTRATION; BUSINESS LICENSE. Shall be deleted in its entirety.

5. Insurance Requirements. Section H of the Agency Contract entitled “INSURANCE REQUIREMENTS” will be deleted and replaced in its entirety with the following language:

5.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or



in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

5.1.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits of \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

5.1.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit of \$1,000,000 per accident for bodily injury and property damage.

5.1.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

5.2 If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

5.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

5.4 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

5.5 Primary Coverage. For any claims related to this contract, Contractor’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

5.6 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

5.7 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers’ Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this

provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5.8 Self Insured Retentions. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

5.9 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

5.10 City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

5.11 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5.12 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

5.13 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

5.14 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

6. Governing Law and Venue. Paragraphs I.2 and I.3 of the Agency Contract entitled "GOVERNING LAW AND VENUE" shall be removed and replaced in its entirety with the following language:

6.1 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

6.2 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

6.3 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

7. Dispute Resolution. Paragraph I.4 of the Agency Contract entitled “ARBITRATION” shall be removed and replaced in its entirety with the following language:

7.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

7.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

7.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

7.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

8. Paragraph I.11 of the Agency Contract titled “ENTIRE CONTRACT; INTERPRETATION” shall be removed in its entirety.

9. Paragraph I.14 of the Agency Contract titled “NON-DISCRIMINATION” shall be removed in its entirety.

Paragraph I.16 of the Agency Contract titled “FEDERAL IMMIGRATION LAWS AND REGULATIONS” shall be removed in its entirety. Paragraph I.19 of the Agency Contract titled “CONFLICTS OF INTEREST” shall be removed in its entirety.

10. Paragraph I.24 of the Agency Contract titled “ISRAEL BOYCOTT DIVESTMENT” shall be removed in its entirety.

11. Section I.28 of the Agency Contract titled “PAYMENT” shall be removed in its entirety and replaced with the following:

11.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

11.2 Invoices.

11.2.1 Invoice Detail. Contractor’s invoice must be on Contractor’s stationary with Contractor’s name, address, and remittance address if different. Contractor’s invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

11.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

11.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

11.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer’s published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

11.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator’s written authorization.

11.2.6 Reporting Requirements. Contractor must submit the following reports using the City’s web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City’s online tutorials on how to utilize the City’s web-based contract compliance portal.

11.2.7 Monthly Employment Utilization Reports. Contractor and Contractor’s subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

11.2.8 Monthly Invoicing and Payments. Contractor and Contractor’s subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

12. Paragraph I.38 of the Agency Contract titled “WAGE COMPLIANCE” shall be removed in its entirety and replaced with the following:

12.1 Contractor shall pay their eligible employees the highest of:

12.1.1 The City of San Diego minimum wage

12.1.2 The State of California minimum wage

12.2 Contractor shall cooperate with all efforts of the City of San Diego to monitor and ensure compliance with applicable labor standards to include, but not be limited to, the following:

12.2.1 Providing copies of pertinent documentation upon request

12.2.2 Cooperating with audits and interviews

12.2.3 Abiding by deadlines and adhering to due dates for determinations and appeals filings.

12.3 Contractor agrees to educate their employees on the applicable wage(s) that law requires them to minimally be paid.

13. Paragraph I.39 of the Agency Contract titled “WRITTEN CERTIFICATION PURSUANT TO A.R.S. §35-394” shall be removed in its entirety.

14. The remaining portions of the Agency Agreement shall remain in full force and effect.