

**PIGGY BACK CONTRACT FOR GOODS AND/OR SERVICES
FOR THE CITY OF KANSAS CITY, MISSOURI**

CONTRACT NO.: EVP2873

TITLE/DESCRIPTION: Maintenance Repair and Operation (MRO)

THIS Contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“CITY” OR “PURCHASER”), and W.W. Grainger (“CONTRACTOR”).

Sec. 1. The Contract. The Contract between the CITY and CONTRACTOR consists of the following Contract Documents:

- (a) this Piggy Back Contract; and
- (b) CONTRACTOR’s Contract with Omnia Cooperative Agreement (“the Primary Contract”) that is attached hereto and incorporated into this Contract; and

Maintenance Repair and Operations (MRO) Supplies, Parts, Equipment, Material

Contract Number: #192163

- (c) any CITY issued Purchase Order to CONTRACTOR; and
- (d) any and all Attachments and Exhibits attached to the Primary Contract. All documents listed in this Section 1 shall be collectively referred to as the “Contract Documents” and are incorporated into this Contract. CITY and CONTRACTOR agree that the terms “Agreement” and “Contract” and “Contract Documents” are used interchangeably in this Contract and the terms “Agreement” and “Contract” and “Contract Documents” each include all “Contract Documents.”

Attachment A: Contract

Sec. 2. Definition. The term “Services” shall mean, depending on the context used in this Contract,:

- (a) Services; or
- (b) Goods, supplies, materials, equipment, products and software; or
- (c) Services **and** goods, supplies, materials, equipment, products and software, provided by CONTRACTOR to the CITY.

Sec. 3. Term of Contract.

- (a) Initial Term. The initial term of this Contract shall begin on January 3, 2022 and shall end on June 30, 2023.
- (b) Renewal Terms. At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract as long as the term of the Primary Contract and all renewal terms of the Primary Contract have not expired.
- (c) Transition Term. Notwithstanding the expiration of the initial term or any renewal term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract.

Sec. 4. Purchase Orders.

- (a) All Services, to be provided by CONTRACTOR under this Contract shall be ordered by the CITY by means of a Purchase Order issued by the CITY. Notwithstanding Section 3 of this Contract, the CITY does not have any financial obligation under this Contract until the CITY issues a Purchase Order which shall be signed by the CITY's Director of Finance certifying there is a balance, otherwise unencumbered, to the credit of the appropriation to which the expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment will be made, each sufficient to meet the obligation incurred in the Purchase Order.
- (b) Subject to the terms and conditions of this Contract and in consideration for the Total Purchase Price ("Purchase Price") contained in each CITY issued Purchase Order, CONTRACTOR hereby agrees to provide all Services ordered pursuant to a CITY issued Purchase Order in accordance with this Contract.
- (c) CONTRACTOR shall not provide Services in excess of the Purchase Price in the Purchase Order and CONTRACTOR shall not be entitled to any payment in excess of the Purchase Price in the Purchase Order from CITY.

Sec. 5. Invoices. CITY shall pay CONTRACTOR after CITY determines that the Services supplied by CONTRACTOR are in conformance with the Contract and the CITY has accepted the Services. To obtain payment for Services supplied by CONTRACTOR pursuant to a CITY issued Purchase Order, CONTRACTOR shall submit to CITY an Invoice in sufficient detail for the CITY to determine that the amount CONTRACTOR is requesting is in fact due and payable. It shall be a condition precedent to payment of any invoice from CONTRACTOR that CONTRACTOR is in compliance with, and not in breach or default of, any terms, covenants and conditions of this Contract. If damages are sustained by CITY as a result of breach or default by CONTRACTOR, CITY may withhold payment(s) to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due CITY from CONTRACTOR may be determined.

Sec. 6. Representations and Warranties of CONTRACTOR. CONTRACTOR hereby represents and warrants to the CITY the following:

- (a) CONTRACTOR is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on CONTRACTOR's ability to perform this Contract in accordance with its terms.
- (b) The execution, delivery and performance by CONTRACTOR of this Contract have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of CONTRACTOR's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to CONTRACTOR or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which CONTRACTOR is a party or by which it or its properties may be bound or affected.
- (c) CONTRACTOR shall not enter into any contract for the Services to be supplied by CONTRACTOR to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the Services to be supplied by CONTRACTOR to CITY.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of CONTRACTOR, threatened against CONTRACTOR which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on CONTRACTOR.

Sec. 7. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

Sec. 8. Risk of Loss. Only upon delivery of the Services in accordance with the terms of this Contract to the CITY, the CITY shall bear the risk of damage, loss, theft, or condemnation of the Services regardless of cause, and any and all repairs and replacements of the Services or any part thereof shall be at the expense of the CITY subject, however, to the Warranty and other terms of this Contract.

Sec. 9. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

Sec. 10. Termination for Convenience. CITY may, at any time upon ten (10) days written notice to CONTRACTOR specifying the effective date of termination, terminate this Contract, in whole or in part. If this Contract is terminated by CITY, CITY shall be liable only for payment for Services provided by CONTRACTOR before the effective date of termination.

Sec. 11. Default and Remedies.

- (a) If CONTRACTOR shall be in default or breach of any provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving CONTRACTOR ten (10) days written notice and opportunity to cure such default or breach.
- (b) If CITY shall be in default or breach of any provision of this Contract, CONTRACTOR may terminate this Contract or suspend CONTRACTOR's performance after giving CITY ten (10) days written notice and opportunity to cure such default or breach.

Sec. 12. Waiver. Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by CONTRACTOR to which the same may apply and, until complete performance by CONTRACTOR of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 13. Acceptance. No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory Product.

Sec. 14. Records.

- (a) For purposes of this Section:
 - 1. "CITY" shall mean the CITY Auditor, the CITY's Internal Auditor, the CITY's Director of Human Relations, the CITY Manager, the CITY department administering this Contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- (b) CONTRACTOR shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records, and CONTRACTOR shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.
- (c) The books, documents and records of CONTRACTOR in connection with this Contract shall be made available to the CITY Auditor, the CITY's Internal Auditor, the CITY's Director of Human Relations and the CITY department administering this Contract within ten (10) days after the written request is made.

Sec. 15. Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in

accordance with the provisions of Chapter 38 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. Contractor shall:

- (a) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years.
- (b) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (c) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 16. Tax Compliance. If the total Purchase Price exceeds \$160,000.00 from all Purchase Orders issued by the CITY for the period of May 1st through April 30th, CONTRACTOR shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. CONTRACTOR also shall submit to the CITY proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

Sec. 17. Buy American Preference. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. The City acknowledges that under this catalog contract, Contractor offers over 1 million different individual products from over 3000 different suppliers in its online catalog and that it cannot guarantee the location of specific product manufacture or origin. Contractor does sell products which are designated as compliant with the federal Trade Agreement Act but not the Buy American Act. Products which are determined by the manufacturer to be Trade Agreement Act

compliant are identified on Contractor's website, www.grainger.com.

Sec. 18. Notices. All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt required or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective upon receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY: City of Kansas City, Missouri
Procurement Services Division
414 East 12th Street, 1st Floor, Room 102 W
Kansas City, Missouri 64106
Attention: Darrell Everette, CPSM, MBA, Manager
Telephone: (816) 513-0798
Facsimile: (816) 513-1066

With copies to: Matthew J. Gigliotti, Esq.
City Attorney
Law Department of Kansas City, Missouri
414 East 12th Street, 23rd Floor
Kansas City, Missouri 64106
Telephone: (816) 513-3153

If to the CONTRACTOR: W.W. Grainger
2300 E. 18th Street
Kansas City, MO 64127
Telephone: (918) 284-9714

Sec. 19. General Indemnification.

- (a) For purposes of this Section only, the following terms shall have the meanings listed:
 - 1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the CITY in the enforcement of this indemnity obligation.
 - 2. **CONTRACTOR's Agents** means CONTRACTOR's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
 - 3. **CITY** means CITY, its Agencies, its agents, officials, officers and employees.

- (b) CONTRACTOR's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to

recover all costs of the insurance requirements imposed by this Contract in its contract price.

- (c) CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused by CONTRACTOR or CONTRACTOR's Agents. CONTRACTOR is not obligated under this Section to indemnify CITY for the negligence of CITY.
- (d) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 20. Insurance.

- (a) CONTRACTOR shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, CONTRACTOR shall supply such insurance at CITY's cost. Policies containing a Self-Insured Retention are unacceptable to CITY unless CITY approves in writing the CONTRACTOR's Self-Insured Retention.
 - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds.
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - c. No Contractual Liability Limitation Endorsement.
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.
 - 2. If applicable, Workers' Compensation Insurance, as required by *statute*, including Employers Liability with limits of:
 - Workers' Compensation Statutory Employers Liability \$100,000
accident with limits of:
 - \$500,000 disease-policy limit
 - \$100,000 disease-each employee
 - 3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by CONTRACTOR.

- (b) The Commercial General Liability Insurance specified above shall provide that CITY and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- (c) All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- (d) CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to indemnify the CITY pursuant to Section 19. If the coverage afforded is cancelled or changed or its renewal is refused, CONTRACTOR shall give at least thirty (30) days prior written notice to CITY. In the event of CONTRACTOR's failure to maintain the required insurance in effect, CITY may order CONTRACTOR to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.
- (e) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 21. Interpretation of the Contract. The terms and conditions of this Piggy Back Contract take precedence over the terms and conditions of the Primary Contract if there is any conflict between the terms and conditions of the Piggy Back Contract and the Primary Contract. The CITY's Manager of Procurement Services shall resolve all disagreements or any ambiguity in this Agreement. The decision of CITY's Manager of Procurement Services shall be final and conclusive if the Manager of Procurement Services acted reasonably in good faith and the value of the dispute as assessed by Contractor is below \$25,000.

Sec. 22. Contract Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

Sec. 23. Guaranteed Lowest Pricing. Additional volume discounts are available to customers upon volume guarantees. Cooperative contracts such as Omnia have some of the best overall values as applicable to the purchasing volume of the cooperative. But each cooperative contract award is customized to the cooperative and the customer segment participating.

Sec. 24. Assignability and Subcontracting.

- (a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.
- (b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 25. Emergencies.

- (a) "Emergency" means any large scale event such as an act of terrorism, major snow or ice storm, fire, wind, tornado, flood, earthquake, major storm or other natural or man-made calamity which results in, or has the potential to result in a significant loss of life or property.
- (b) During and after an emergency, CONTRACTOR shall provide special services to the CITY including CONTRACTOR shall open CONTRACTOR's facilities even on nights and weekends as necessary to meet the needs of the CITY during a disaster.
- (c) CONTRACTOR shall not charge CITY any fee for opening facilities during an emergency or for extending CONTRACTOR's hours of operation during an emergency. CITY shall pay CONTRACTOR the agreed upon contract prices for all purchases made by CITY during the emergency and CONTRACTOR shall not charge CITY any additional mark-up, fee or cost for any purchases made by CITY during an emergency.
- (d) CONTRACTOR shall quickly mobilize CONTRACTOR's internal and external resources to assist CITY when an emergency unfolds.
- (e) Extended hours and personnel. During an emergency, CONTRACTOR's facilities shall stay open 24 hours if requested by the CITY. CONTRACTOR shall utilize

additional CONTRACTOR personnel to take CITY orders if necessary. CONTRACTOR's Call Center shall accept phone orders 24 hours a day.

- (f) CONTRACTOR shall have contingency plans with CONTRACTOR's suppliers to provide additional supplies and equipment quickly to CITY as needed.
- (g) CONTRACTOR shall cooperate with CITY to properly document any and all expenses incurred by CITY with CONTRACTOR and CONTRACTOR shall assist CITY in meeting any and all documentation requirements of the Federal Emergency Management Agency (FEMA).

Sec. 26. Compliance with Laws. CONTRACTOR shall comply with all federal, state and local laws, ordinances and regulations applicable to all the Product to be provided by CONTRACTOR to the CITY in this Contract.

Sec. 27. Employee Eligibility Verification. If this Contract exceeds five thousand dollars (\$5,000.00), CONTRACTOR shall execute and submit an affidavit, in a form prescribed by CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U. S. C. § 1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR'S enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986.

CONTRACTOR may obtain additional information about E-Verify and enroll at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. If CONTRACTOR is enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. CONTRACTOR shall submit the affidavit and attachments to the CITY prior to execution of the Contract, or at any point during the term of the Contract if requested by CITY.

Sec. 28. Quality Services Assurance Act. If this Contract exceeds \$160,000.00, CONTRACTOR certifies CONTRACTOR will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$12.50 per hour in compliance with the CITY's Quality Services Assurance Act, Section 3-66, Code of Ordinances or CITY has granted CONTRACTOR an exemption.

Sec. 29. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and CONTRACTOR employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, CONTRACTOR certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

CONTRACTOR

I hereby certify that I have the authority to execute
this document on behalf of CONTRACTOR.

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____

Attachment A: Contract