

File No. 240838

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date October 2, 2024

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Executed Contract 1/12/2024
- OCA Presentation 10/2/2024
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Brent Jalipa Date September 26, 2024

Completed by: Brent Jalipa Date _____

1 [Contract Amendment - W.W. Grainger, Inc - As-Needed Citywide Contract for Industrial
2 Supplies - Not to Exceed \$32,000,000]

3 **Resolution approving the Contract Amendment between the City, acting by and**
4 **through the Office of Contract Administration (OCA), and W.W. Grainger, Inc for the**
5 **purchase of Industrial Supplies by City departments, increasing the amount by**
6 **\$25,000,000 for a total not to exceed amount of \$32,000,000 with no changes to the term**
7 **of two years, nine months and 27 days from January 12, 2024, through November 8,**
8 **2026; and to authorize OCA to enter into amendments or modifications to Amendment**
9 **that do not materially increase the obligations or liabilities to the City and are**
10 **necessary to effectuate the purposes of Amendment.**

11
12 WHEREAS, Contractor was ranked as the highest ranked proposer pursuant to
13 Solicitation No. 091422 for Industrial and Building-Related Supplies and Equipment issued on
14 July 27, 2022 by Sourcewell, a State of Minnesota local government unit and service
15 cooperative that conducts solicitations for commonly used goods and services on behalf of
16 state and local governments located in the United States and Canada; and

17 WHEREAS, Administrative Code, Section 21.16(b), authorizes the Office of Contract
18 Administration (“OCA”) to select Contractor pursuant to solicitation conducted by other
19 government entities and/or national cooperatives;

20 WHEREAS, On January 12, 2024, OCA and Contractor entered into an agreement for
21 the purpose of selling industrial supplies to City departments (“Original Agreement”); and

22 WHEREAS, The Original Agreement has an initial term of January 12, 2024, to
23 November 8, 2026, and a not to exceed amount of \$7,000,000; and

1 WHEREAS, OCA wishes to amend the Original Agreement by increasing the maximum
2 expenditure by \$25,000,000 for a total not to exceed amount of \$32,000,000 (the “First
3 Amendment”); and

4 WHEREAS, Charter, Section 9.118(b), requires Board of Supervisors’ approval by
5 Resolution of any contract which, when entered into, extends over 10 years, and of any
6 contract which, when entered into, costs the City \$10,000,000 or more; and

7 WHEREAS, The proposed Amendment contained in File No. 240838, is substantially in
8 final form, with all material terms and conditions included, and only remains to be executed by
9 the parties upon approval of this Resolution; now, therefore, be it

10 RESOLVED, That the Board of Supervisors hereby approves the Amendment in
11 substantially the form contained in File No. 240838; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors authorizes OCA to make any
13 modifications to the Amendment, prior to its final execution by all parties, that OCA
14 determines, in consultation with the City Attorney, are consistent with this Resolution, in the
15 best interest of the City, do not materially increase the obligations or liabilities of the City, are
16 necessary or advisable to effectuate the purposes of the Amendment, and are in compliance
17 with all applicable laws, including City’s Charter; and, be it

18 FURTHER RESOLVED, That within 30 days of the Amendment being fully executed by
19 all parties, OCA shall submit to the Clerk of the Board of Supervisors a completely executed
20 copy for inclusion in File No. 240838; this requirement and obligation resides with the
21 Department, and is for purposes of having a complete file only, and in no manner affects the
22 validity of approved Amendment.

Item 5 File 24-0838	Department: Office of Contract Administration
--------------------------------------	---

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the first amendment to the Office of Contract Administration’s (OCA) industrial supplies purchasing contract with W.W. Grainger, Inc. (Grainger), increasing the total not-to-exceed amount from \$7,000,000 to \$32,000,000, with no change to the contract term, which ends November 8, 2026, with options to extend through November 8, 2028.

Key Points

- OCA selected Grainger to provide industrial supplies to City departments based on a competitive solicitation managed by Sourcewell, a State of Minnesota local government entity that facilitates procurement for local governments across the U.S. and Canada, as allowed under Administrative Code Section 21.16(b). In addition to Grainger, OCA awarded \$7 million contracts to four other industrial suppliers, including Fastenal Company, White Cap, LP, Sid Tool Co. doing business as MSC Industrial Supply Inc., and Global Equipment Co. However, Grainger has been the most highly utilized contract by City departments.
- Individual departments utilize the contract by issuing purchase orders based on their needs. City departments have encumbered 86 percent of the contract funds in seven months, averaging \$851,508 monthly, with 27 months remaining under the original term. The current \$7 million not to exceed amount is projected to be exhausted by October 6th, 2024.
- The contract has terms and conditions to hold the vendor accountable for product availability, delivery timeframes, the condition of products, and the inspection of products.

Fiscal Impact

- An additional \$25 million, including a 15 percent contingency, is needed to cover projected spending through November 8, 2026, bringing the total contract amount to \$32 million. Based on historical spending, approximately half of the contract is funded by enterprise departments and half by General Fund Departments.
- Monthly spending by City departments has increased to an average of \$851,508 since January 12th compared to the historical average of \$528,391 from 2019 to 2023. According to OCA staff, the 61 percent increase in spending is largely due to rising costs of industrial supplies and higher spending on facility improvement projects following the slowdown during the peak of the COVID-19 pandemic.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

Administrative Code Section 21.16(b) allows City departments to utilize the competitive procurement process of any other public agency or non-profit made up of multiple public agencies to make purchases of commodities or services for the use of the City under the terms established in that agency’s competitive procurement process and as agreed upon by the City and the procuring agency, upon making a determination that (i) the other agency’s procurement process was competitive or the result of a sole-source award, and (ii) the use of the other agency’s procurement would be in the City’s best interests.

BACKGROUND

On January 12, 2024, the San Francisco Office of Contract Administration (OCA) entered into a contract with W.W. Grainger, Inc. (Grainger) for the purchase of industrial supplies, under PeopleSoft Contract ID 1000030381 (OCA Term Contract 74106A). This agreement has a not to exceed amount of \$7 million and an initial expiration date of November 8, 2026, and two one-year options to extend through November 8, 2028. The extension options are contingent upon the extension of the Sourcewell contract (described below).

Selection

OCA selected Grainger (and three other companies) based on a competitive solicitation managed by Sourcewell, a State of Minnesota local government entity that facilitates procurement for local governments across the U.S. and Canada, as allowed under Administrative Code Section 21.16(b). In July 2022, Sourcewell issued a Request for Proposals (RFP) to award an industrial supply purchasing contract. Sourcewell received 20 proposals, and a four-member evaluation panel scored 19 proposals. Of the 19 proposals evaluated through the solicitation, Grainger ranked highest, receiving 871 out of 1,000 points, based on criteria such as pricing, financial stability, and delivery capabilities.

Exhibit 1: Proposers and Rankings from RFP

Proposer	Score (Out of 1,000)	Rank
W.W. Grainger*	871	1
Motion Industries, Inc.	867	2
Fastenal Company*	852	3
White Cap, LP*	837	4
Sid Tool Co.*	834	5
WESCO Distribution, Inc.	833	6
Lawson Products, Inc.	814	7
Winzer Corporation	812	8
Global Equipment Company, Inc.	810	9
Hi-Line Electric Co., Inc.	799	10
1 Source Holdings, LLC	791	11
Hilti, Inc.	785	12
supplyFORCE	771	13
Kohler Co.	751	14
Best Plumbing Specialties, Inc.	747	15
ATEK Distribution, LLC	735	16
ABCO Industries, Incorporated	713	17
CONTINENTAL Hardware, inc.	656	18
HBM Group, INC.	620	19

Source: Sourcewell Proposal Evaluation

*Awarded contract with OCA

In addition to Grainger, OCA awarded \$7 million contracts to four other industrial suppliers, including Fastenal Company, White Cap, LP, Sid Tool Co. doing business as MSC Industrial Supply Inc., and Global Equipment Co. OCA sought to enter into contracts with the top five proposers from the Sourcewell RFP, and four of the companies (all except Motion Industries, Inc., which did not respond to the City's inquiries) agreed to enter into contracts. Separately, OCA entered into an agreement with Global Equipment Co for industrial supplies. This multi-vendor strategy was implemented to ensure a competitive supply chain that meets the City's diverse industrial needs. OCA anticipated increasing the contract amounts based on actual usage, according to an August 2024 OCA memo on the proposed contract amendment.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the first amendment to OCA's industrial supplies purchasing contract with W.W. Grainger, Inc., increasing the total not-to-exceed (NTE) amount from \$7,000,000 to \$32,000,000, with no change to the contract term, which ends November 8, 2026.

While multiple contracts were executed for industrial supplies, Grainger has been the most highly utilized by City departments. Grainger's usage (\$851,508 in average monthly encumbrances) significantly exceeds that of the other four suppliers, with average monthly encumbrances ranging from as low as \$121 (Global Equipment) to \$224,477 (MSC Industrial Supply Inc.). Given the high demand for supplies from Grainger, the current \$7 million not to exceed amount is projected to be exhausted by October 6th, 2024, well before the contract's initial expiration in November 2026. OCA did not anticipate such variation in utilization across the five contracts when it awarded the contracts. To ensure the availability of industrial supplies to City departments through November 2026, OCA recommends increasing the not to exceed amount of the Grainger contract by \$25 million.

Permitted and Prohibited Goods

Under this contract, City departments can purchase a wide range of industrial materials and equipment, ranging from raw materials such as metals and chemicals to finished products like tools and safety gear. However, certain product categories, such as office supplies, disposable food-ware, and janitorial paper products, are expressly prohibited. City departments must use designated contracts for these items.

Cost-Saving Provisions

The contract with Grainger offers cost-saving measures, providing City departments with discounts ranging from 5 percent to 40 percent off list prices. Additionally, the City qualifies for an extra three percent discount if the City purchases at least \$25,000 or more during the contract year and increases annual spending by 12 percent or more.

Environmental and Emergency Service Provisions

Grainger is required to comply with the Environmentally Preferable Purchasing (EPP) Program, which promotes the acquisition of products that meet environmental, health, cost, and performance criteria. All Grainger products must adhere to the environmental standards established by San Francisco's environmental ordinances and other policies, such as the Resource Conservation Ordinance and the Mayor's Executive Order on Recycling and Conservation. Additionally, the contract includes a Priority 1 emergency service clause, which ensures that Grainger prioritizes the City during emergencies that affect the San Francisco Bay Area, unless preempted by State or Federal laws.

Performance Monitoring and Accountability

The contract has terms and conditions to hold the vendor accountable for product availability, delivery timeframes, the condition of products, and the inspection of products, as described below. Grainger is required to provide annual usage reports detailing all goods delivered under the contract, including items ordered, delivery dates, quantities, and prices. The City has the right to terminate the contract if the contractor fails to submit these reports timely.

All goods delivered by Grainger are subject to the City's inspection, with the right to accept or reject any non-conforming items. In the event of non-compliance, the City can charge storage fees for rejected items or return deliveries and seek a refund.

If Grainger fails to deliver goods as specified in the contract, the City may purchase from an alternative vendor. Should the replacement goods cost more than the contract price, the City can charge Grainger for the difference or terminate the contract. This provision extends to instances where deliveries are late or fail to meet quality standards.

Additionally, Grainger is required to pass on the manufacturer’s warranty for all goods delivered to the City, ensuring protection against defective products. For applicable products, Grainger must provide Safety Data Sheets (SDSs), which are documents that include important information about the properties of chemicals, health and environmental hazards, protective measures, and safety precautions for handling, storing, and transporting hazardous materials.

Actual Spending

Since the Grainger contract took effect in January 2024, a total of 24 City departments have encumbered approximately \$6,046,212 of the total current contract amount of \$7 million, averaging \$851,508 per month in purchase orders. Encumbrances for the seven departments with the most encumbrances are shown in Exhibit 2 below.

Exhibit 2: Purchase Order Encumbrances by Department, As of August 16, 2024

Department	Encumbrances	% of Total
Airport	\$1,670,793	27.6%
Public Utilities Commission	957,353	15.8%
Emergency Management	694,810	11.5%
City Administrator	582,893	9.6%
Public Health	378,963	6.3%
Police	330,000	5.5%
Municipal Transportation Agency	293,276	4.9%
All Others	1,138,124	18.8%
Total	\$6,046,212	100.0%

Source: OCA

FISCAL IMPACT

The proposed first amendment increases the not to exceed amount by \$25 million for a total of \$32 million. Although the current contract term ends on November 8, 2026, departments have encumbered 86 percent of the total contract amount as of August 15, 2024, with 27 months remaining in the contract. The requested \$25 million increase is, therefore, intended to provide contract spending authority from August 15, 2024, to November 8, 2026, or approximately 27 months at \$851,508 in spending per month. The amendment also includes a 15 percent contingency to account for any unforeseen increases in demand or price increases.

Exhibit 3: Not to Exceed Amount Calculation

Current Not to Exceed Amount	\$7,000,000
Encumbrances as of August 15, 2024	\$6,046,212
Average Monthly Encumbrances	\$851,508
Number of Months to Contract End Date	27
Projected Additional Spending	\$22,813,255
Contingency (15%)	\$3,421,988
Less Available Contract Balance	(\$1,339,640)
Total Additional Funds Needed	\$24,895,604
Projected Spending	\$31,895,604
Proposed Revised NTE (rounded)	\$32,000,000

Source: OCA

Note: The contract balance of \$1,339,640 includes purchase orders that have been fully paid out.

Based on historical spending, approximately half of the contract is funded by enterprise departments and half by General Fund Departments.

Increase in Monthly Spend

Monthly encumbrances by City departments under contracts with Grainger for industrial supplies have increased to an average of \$851,508 since January 12th compared to the historical average of \$528,391 from 2019 to 2023. According to OCA staff, the 61 percent increase in spending is largely due to rising costs of industrial supplies and higher spending on facility improvement projects, following the slowdown during the peak of the COVID-19 pandemic. According to the Bureau of Labor Statistics, the industrial commodities index increased by 28 percent between July 2019 and July 2024, or 5.6 percent annually, on average.

We note that if the increase in spending on industrial supplies is temporary, there may be excess contract authority under the proposed amendment.

RECOMMENDATION

Approve the proposed resolution.

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

First Amendment

THIS **FIRST** AMENDMENT (“Amendment”) is made as of **[insert date]**, in San Francisco, California, by and between **W.W. Grainger, Inc.** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

Recitals

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount; and

WHEREAS, Contractor was selected pursuant to San Francisco Administrative Code Section 21.16(b) pursuant to waiver OCAWVR0008678 granted by the Office of Contract Administration, and this Amendment is consistent with that waiver; and

WHEREAS, this Contract is deemed exempt from Chapter 14B of the San Francisco Administrative Code because it is primarily for Commodities and, as such, there is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, this Amendment is consistent with an approval obtained from the City’s Board of Supervisors under **[insert resolution number]** approved on **[insert date of Commission or Board action]** in the amount of \$32,000,000 for the period commencing January 12, 2024 and ending November 8, 2026; and

WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement, as amended herein, has a value of \$100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated January 12, 2024 between Contractor and City.

1.2 **San Francisco Labor and Employment Code.** As of January 4, 2024, San Francisco Administrative Code Chapters 21C (Miscellaneous Prevailing Wage Requirements), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 12K (Salary History), 12P (Minimum Compensation), 12Q (Health Care Accountability), 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 12U (Sweatfree Contracting) are redesignated as Articles 102 (Miscellaneous Prevailing Wage Requirements), 131 (Nondiscrimination in Contracts), 132 (Nondiscrimination in Property Contracts), 141 (Salary History), 111 (Minimum Compensation), 121 (Health Care Accountability), 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring

and Employment Decisions), and 151 (Sweatfree Contracting) of the San Francisco Labor and Employment Code, respectively. Wherever this Agreement refers to San Francisco Administrative Code Chapters 21C, 12B, 12C, 12K, 12P, 12Q, 12T, and 12U, it shall be construed to mean San Francisco Labor and Employment Code Articles 102, 131, 132, 141, 111, 121, 142, and 151, respectively.

1.3 **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 Calculation of Charges. Section 3.3.1 Calculation of Charges of the Agreement currently reads as follows:

Contractor shall provide an invoice to the City for Goods delivered in accordance with Appendix B, "Calculation of Charges." Compensation shall be made for Goods identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered. In no event shall the amount of this Agreement exceed **SEVEN MILLION DOLLARS AND ZERO CENTS (\$7,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges under this Agreement.

Such section is hereby amended in its entirety to read as follows:

Contractor shall provide an invoice to the City for Goods delivered in accordance with Appendix B, "Calculation of Charges." Compensation shall be made for Goods identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered. In no event shall the amount of this Agreement exceed **THIRTY-TWO MILLION DOLLARS AND ZERO CENTS (\$32,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges under this Agreement.

Article 3 Updates of Standard Terms to the Agreement

The Agreement is hereby modified as follows:

3.1 Article 13 Data and Security. Article 13 of the Agreement is hereby replaced in its entirety to read as follows:

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in delivering the Goods. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 City Data; Confidential Information. In the delivery of the Goods, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved (Payment Card Industry ("PCI") Requirements).

13.3 Reserved (Business Associate Agreement).

13.4 Management of City Data.

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created for, or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.2 Disposition of City Data. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.4.3 Protected Health Information. Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement.

Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, City may terminate the Agreement.

13.5. **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

Article 4 Effective Date

Each of the modifications set forth in Articles 2 and 3 shall be effective on and after the date of this Amendment.

Article 5 Legal Effect

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY
Recommended by:

CONTRACTOR
W.W. Grainger, Inc.

Paul Cheng
Procurement Manager
Office of Contract Administration

Peter Chu
Sr. Government Account Manager
100 Grainger Parkway
Lake Forest, IL 60045

Approved as to Form:

City Supplier number: 0000019315

David Chiu
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract
Administration, and Purchaser

By: _____



**San Francisco Office of the City Administrator
City Administrator Carmen Chu**

Citywide Contract for Industrial Supplies (TC74106A)

File 24-0838

Office of Contract Administration

Board of Supervisors Budget and Finance Committee

October 2, 2024

Contract summary

- **PeopleSoft Contract ID:** 1000030381
- **Awarded contractor:** W.W. Grainger, Inc. (“Grainger”)
- **Covered goods:** Citywide industrial supplies used by all City departments to support City operations, maintain public infrastructure and ensure employee safety.
- **Pricing Structure:** % discounts off Grainger’s list price.
- **Original Contract:** Not to exceed amount (“NTE”) of \$7,000,000, with a term of 1/12/2024 to 11/8/2026 and the option to extend to 11/8/2028, for a total of approx. 58 months.
- **Amendment 1:** Increase NTE to \$32,000,000, with no change to initial term. *See Table 1 for NTE calculations.*

Purchasing Authority

- SF Administrative Code Section 21.16(b) authorizes the award of contracts pursuant to solicitations conducted by other government entities and purchasing cooperatives.
- Sourcewell, a State of Minnesota local government unit and cooperative, issued Solicitation No 091422 in 2022 for industrial supplies. Sourcewell received 20 proposals, of which 19 were evaluated.
- Grainger was ranked number 1 (receiving 871 out of 1,000 points) based on various factors, including: depth and breadth of offered products, pricing, delivery and distribution capabilities, financial viability, marketplace success, valued-added attributes, and warranties.

Multiple Contracts Awarded

- As it has done historically, OCA could have awarded a single contract to the top ranked proposer, Grainger.
- However, Grainger has been and continues to be the primary source of industrial supplies for City departments for 10+ years.
- To increase City departments' options, OCA offered contracts to the top 5 ranked proposers of the Sourcewell solicitation. Four accepted, as did the top ranked proposer from another solicitation conducted by OMNIA Partners, a cooperative public procurement purchasing organization. *See Table 2 for a list of all awarded contracts.*

Benefits of awarding multiple contracts

- **Increased competition and avoidance of monopoly power:** Each contract provides the minimum discounts City can expect to receive off the contractor's list prices. With more contracts in place, contractors are motivated to provide deeper discounts.
- **Price Comparisons:** Access to multiple suppliers means we can easily compare prices, making it more difficult for any one supplier to inflate costs without a competitive justification.
- **Supply Chain Stability:** Having multiple suppliers reduces the risks associated with supply chain disruptions (e.g., natural disasters, geopolitical issues).

Contract NTE Calculations

- Between 2019 and 2023 (two years of which were during the COVID pandemic), City departments encumbered a combined average of \$530K per/month. *See Table 4 for a breakdown of total PO encumbrances by City departments as of August 16, 2024.*
- Based on this data, OCA could have set the initial Contract NTE with Grainger to \$35MM (\$530K/month times 58 months times plus a 15% contingency).
- However, because OCA was issuing **five** industrial supplies contracts for the very first time, the NTE of each contract was capped at \$7MM. Based on actual spend, this NTE must be increased to \$32,000,000 to ensure adequate capacity through 11/8/2028.

Conclusion

- Contract 1000030381 with Grainger was executed on January 12, 2024 for \$7MM. Since then, City departments have encumbered approx. \$6MM in POs under this contract.
- Although they now have more choices, City departments continue to rely on Grainger as their primary source for such products based on brand recognition, reliability and pricing.
- Regardless, industrial supplies are critical to City operations, public infrastructure and employee safety and, for that reason, City departments should be permitted to continue ordering from this contract.

Reference materials

Table 1: NTE Calculations for Contracts 1000030381 with Grainger based on PO Encumbrance data as of August 16, 2024

Start Date: Jan 12, 2024 End Date: November 8, 2026	
Total Encumbered Funds	\$6,046,212
Avg Monthly Encumbrances Since Contract Start Date	\$851,508
Number of Months to Contract End Date	27
Total Funds Needed through Contract End Date	\$22,813,255
Less Remaining Contract Balance	\$1,339,640
Plus Contingency (15%)	\$3,421,988
Total Additional Funds Needed through Contract End Date	\$24,895,604

Table 2: Contract Pring Structure

Category	Min. % Discount off of List Price
Abrasives	7%
Adhesives/Sealants/Tape	10%
Air Filters	40%
Cleaning	22%
Electrical Supplies	23%
Electronics/Appliances/Batteries	19%
Fasteners	32%
Hand Tools	14%
HVAC Supplies	17%
Lab Supplies	15%
Lighting	22%
Lubrication	10%
Material Handling/Storage/Packaging	15%
Motors	19%
Outdoor Equipment	12%
Paint, Equipment, & Supplies	10%
Pneumatics	11%
Pumps	7%
Power Tools	11%
Power Transmission	19%
Safety	19%
Security	15%
Test Instruments	7%
Welding, Machining, Cutting	10%
All other product categories	5%

- Grainger offers an additional 3% discount if City (a) purchases \$25,000 during the contract year, and (b) increases its spend annually by at least twelve percent (12%) over the preceding year.
- No minimum quantity required.
- Free standard ground delivery.

Table 3: Average Monthly PO Encumbrances for Industrial Supplies as of August 16, 2024

Supplier Name	PS Contract ID	Contract Start Date	Contract End Date	Initial Contract NTE Amt	Average Monthly Encumbrance Amount
W.W. Grainger, Inc	1000030381	1/12/2024	11/8/2026, with option to extend to 11/8/2028	\$7,000,000	\$851,508
Fastenal Company	1000030780	6/7/2024		\$7,000,000	\$17,122
White Cap, LP	1000031095	2/16/2024		\$7,000,000	\$6,104
Sid Tool Co., dba MSC Industrial Supply Inc.	1000030247	12/1/2023		\$7,000,000	\$224,477
Global Equipment Co	1000031014	6/7/2024	11/30/2024, with option to extend to 11/30/26	\$7,000,000	\$121

Table 4: Breakdown of Total PO Encumbrances by City Departments as of August 16, 2024

Department	Total
AIR	\$1,670,793
PUC	\$957,353
DEM	\$694,810
ADM	\$582,893
DPH	\$378,963
POL	\$330,000
MTA	\$293,276
All Others	\$1,138,124
Total	\$6,046,212

Table X: Contract Performance Matrix

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco
and
W.W. Grainger, Inc.
TC74106A**

AGREEMENT

This Agreement is made this 12th day of January, 2024, in the City and County of San Francisco (“City”), State of California, by and between W.W. Grainger, Inc., at 100 Grainger Parkway, Lake Forest, IL 60045 (“Contractor”) and City.

Recitals

WHEREAS, the Office of Contract Administration (“OCA”) on behalf of City departments (“Department”) wishes to procure industrial supplies from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to deliver the Goods required by City as set forth under this Agreement; and

WHEREAS, Contractor was selected pursuant to OCAWVR0008678 issued by OCA, which grants a waiver to solicitation in accordance with San Francisco Administrative Code Section 21.16(b) and authorizes OCA to select Contractor pursuant to Solicitation Number 091422 issued by Sourcewell, a State of Minnesota local government unit and service cooperative, on July 26, 2022 (“Sourcewell Solicitation”); and

WHEREAS, the Sourcewell Solicitation requested “proposals for Facility MRO [Maintenance, Repair, and Operations], Industrial, and Building-Related Supplies and Equipment to result in a contracting solution for use by its Participating Entities”, of which City is one; and

WHEREAS, the Sourcewell Solicitation resulted in the evaluation of nineteen (19) proposals of which Contractor was ranked first and awarded a contract with a start date of November 7, 2022 and an end date of November 8, 2026, with the option to extend the contract two (2) times for one (1) additional year per extension through November 8, 2028, upon the request of Sourcewell and written agreement by Contractor (“Sourcewell Contract”); and

WHEREAS, this Contract is primarily for Commodities and, as such, deemed exempt from the Subcontracting Requirements of Chapter 14B of the San Francisco Administrative Code; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and all City Departments authorized to utilize this Agreement for the purpose of securing the Goods described herein.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (“Chapter 12M”).

1.6 “Contractor” means W.W. Grainger, Inc., with a principal place of business at 100 Grainger Parkway, Lake Forest, IL 60045.

1.7 Reserved (“Deliverables”).

1.8 “Goods” or “Commodities” means the products, materials, equipment or supplies to be provided by Contractor under this Agreement.

1.9 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 “Party” and “Parties” means the City and Contractor either individually or collectively.

1.11 Reserved (“Services”).

1.12 “Sourcewell Solicitation” shall mean Solicitation Number 091422 issued by Sourcewell, a State of Minnesota local government unit and service cooperative, on July 26, 2022.

1.13 “Sourcewell Contract” shall mean the contract awarded by Sourcewell to Contractor pursuant to Solicitation Number 091422, with a start date of November 7, 2022 and an end date of November 8, 2026, with the option to extend the contract two (2) times for one (1)

additional year per extension through November 8, 2028, upon the request of Sourcewell and written agreement by Contractor.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on January 12, 2024 and expire on November 8, 2026, unless earlier terminated as otherwise provided herein.

2.2 **Options.** The City has the option to renew the Agreement two (2) times for one (1) additional year per extension through November 8, 2028, but only if the Sourcewell Contract is also extended per the terms and conditions of such contract. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 **Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City for Goods delivered in accordance with Appendix B, "Calculation of Charges." Compensation shall be made for Goods identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered. In no event shall the amount of this Agreement exceed **SEVEN MILLION DOLLARS AND ZERO CENTS (\$7,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event

shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges under this Agreement.

3.3.2 Payment Limited to Satisfactory Delivery of Goods. Contractor is not entitled to any payments from City until City approves the Goods delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Goods, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Goods delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Goods in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured. Contractor shall not stop providing Goods as a result of City's withholding of payments, as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Goods delivered, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information may not be processed for payment.

3.3.5 Reserved (LBE Payment and Utilization Tracking System).

3.3.6 Getting paid by the City for Goods.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.7 Grant Funded Contracts.

(a) **Disallowance.** If Contractor requests or receives payment from City for Goods, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(b) **Grant Terms.** The funding for purchases made under this Agreement may be provided in full or in part by a Federal or State grant to the City. If such funds are used to purchase Goods under this Agreement, the City may be required to incorporate

certain funding terms into this Agreement (“Grant Terms”). Contractor agrees that Provision 21 of the Sourcewell Contract shall apply to purchases funded by a Federal grant to the City. Contractor agrees to comply with any additional grant funding terms that are identified by City in connection with purchase orders issued under this Agreement. To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(c) Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.3.8 **Payment Terms.**

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the delivery of Goods or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **Reserved (Payment Discount Terms).**

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Goods. Contractor will permit City to audit, examine, copy, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Reserved (Payment of Prevailing Wages).**

3.7 **Reserved (Displaced Worker Protection Act).**

Article 4 Goods

4.1 **Reserved (Primary and Secondary Contractors).**

4.2 **Term Agreement – Indefinite Quantities.** This is a term, indefinite quantities Agreement to supply the Goods identified in this Agreement. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the Agreement. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may also make purchases from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this Agreement. City will not honor minimum order charges under this Agreement.

4.3 **Reserved (Qualified Personnel).**

4.4 **Goods.**

4.4.1 **Place of Manufacture.** No article furnished hereunder shall have been made in prison or by convict labor, except Goods purchased for use by City's detention facilities. The City may require Contractor to provide within seven (7) working business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the Agreement requirements.

4.4.2 **Electrical Products.** Goods must comply with all applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code.

4.4.3 **Condition of Goods.** Goods offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein. Contractor shall establish quality control measures, as applicable to department's operations, and promptly provide documented reports to City of any product defects or premature failures.

4.4.4 **Inspection.** All Goods supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official responsible for inspection. Non-conforming or rejected Goods may be subject to reasonable storage fees.

4.4.5 **F.O.B.** Goods shall be shipped Freight on Board, to any destination named in a purchase order issued by City against this Agreement. *The cost of shipment must be incorporated into the offered unit costs.*

4.4.6 **Failure to Deliver.** If Contractor fails to deliver Goods of the quality, in the manner or within the time called for by this Agreement, such Goods may be bought from any source by Purchasing. If City is required to pay a price that exceeds the price agreed upon by this Agreement, the excess price will be charged to and collected from Contractor (or sureties on its

bond, if bond has been required); or, the City may terminate the Agreement for default; or, the City may return deliveries already made and receive a refund.

4.4.7 **Safety Data Sheets.** Where required by law or by City, Contractor will include Safety Data Sheets (SDSs) with delivery for applicable items. Failure to include the SDSs for such items will constitute a material breach of contract and may result in refusal to accept delivery.

4.4.8 **Awarded Goods.** If during the term of the Agreement, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the Agreement without a penalty to the City. The City's sole obligation to the supplier is payment of deliveries made prior to the cancellation date. City shall give the supplier ten days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the Agreement price. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of City will constitute a Default.

4.4.9 **Warranty.** Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

4.5 **Reserved (Services).**

4.6 **Assignment.** Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.7 **Reserved (Liquidated Damages).**

4.8 **Reserved (Performance Bond).**

4.9 **Reserved (Fidelity Bond).**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Goods procured under this Agreement unless preempted by

State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Goods ordered during an emergency and not covered under the awarded Agreement.

4.11 **Usage Reports by Contractor.**

4.11.1 Each year, no later than February 15, Contractor shall prepare and submit to City an electronic report of the total Goods delivered under this Agreement during the preceding calendar year (January 1 – December 31). The report must list by City department the following: (1) all Goods ordered (“Order”) (2) all Goods delivered; (3) the date on which each Order was placed; (4) the date on which each Order was delivered; and (5) total quantity and unit price of the Goods contained within each Order. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Agreement. Contractor shall email reports to OCAVendor.Reports@sfgov.org.

4.11.2 Any report files larger than 10MB must be submitted in electronic format on USB drive and mailed to the address shown below with the term Agreement number and “Annual Supplier Reporting” clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting
 Re: Term Contract No. 74106A
 City and County of San Francisco
 Office of Contract Administration – Purchasing
 City Hall, Room 430
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102-4685

4.11.3 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness.

- (d) Reserved (Professional Liability Insurance).
- (e) Reserved (Technology Errors and Omissions Liability Insurance).
- (f) Reserved (Cyber and Privacy Coverage).
- (g) Reserved (Pollution Liability Insurance).

5.1.2 Additional Insured Endorsements.

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation Endorsements.

(a) Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, and its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements.

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) The Pollution Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.5 Other Insurance Requirements.

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before delivering any Goods, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to deliver Goods, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing

indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's delivery of Goods pursuant to this Agreement.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR GOODS DELIVERED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Goods delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience.

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all obligations under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for Goods, materials, equipment or other items.

(c) At City’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City’s approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any obligations that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within thirty (30) days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth the cost of all Goods delivered prior to City’s notice of termination. City’s payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Goods delivered by Contractor under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense, which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for the Goods delivered by Contractor’s final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Goods delivered by Contractor under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Goods, the difference between the invoiced amount and City’s estimate of the reasonable cost of delivering the invoiced Goods in compliance with the requirements of this Agreement.

8.1.6 City’s payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
-----	--------------------------	-------	---------------------------------

4.6	Assignment	10.13	Reserved (Working with Minors)
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor, or with respect to any substantial part of Contractor's property; (ii) constituting an order for relief or approving a petition for relief, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Delivery of Goods		9.2	Works for Hire
3.3.7	Grant Funded Contracts		11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue
3.5	Submitting False Claims		11.8	Construction
Article 5	Insurance and Indemnity		11.9	Entire Agreement
6.1	Liability of City		11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages		11.11	Severability
Article 7	Payment of Taxes		Article 12	Department Specific Terms
8.1.6	Payment Obligation		Article 13	Data and Security
9.1	Ownership of Results		Appendix D	Reserved (Business Associate Agreement)

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this

Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In delivering the Goods, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is

required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 **Nondiscrimination Requirements.**

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code Section 12B.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 **Reserved (Minimum Compensation Ordinance).**

10.8 **Reserved (Health Care Accountability Ordinance).**

10.9 **First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement; and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) and California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., if state funds are involved.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid, proposal or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved (Slavery Era Disclosure).

10.13 Reserved (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved (Public Access to Nonprofit Records and Meetings).

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Distribution of Beverages and Water.

10.17.1 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 Packaged Water Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 Preservative Treated Wood Products. Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

10.20 Reserved (Sweat Free Procurement).

10.21 Environment Code Chapter 5, Resource Conservation Ordinance.

10.21.1 Reserved (Printing Services and/or Writing Paper Products).

10.21.2 Reserved (Collection of Recyclable Materials).

10.22 Reserved (Prop J Approval).

10.23 Use of City Opinion. Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor’s performance under this Agreement without prior written permission of Purchasing.

Article 11 General Provisions

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Director of Purchasing City and County of San Francisco Office of Contract Administration
-----------------	---

	Purchasing Division City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 Email: OCA@sfgov.org Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	W.W. Grainger, Inc. 100 Grainger Parkway Lake Forest, IL 60045 Attn: Peter Chu, Senior Government Account Manager Peter.chu@grainger.com 925-212-7592

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Goods in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's delivery of the Goods, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the delivery of the Goods under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either

Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.6.3 Reserved (Health and Human Service Contract Dispute Resolution Procedure).

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 Order of Precedence. Contractor agrees to furnish the Goods described herein in accordance with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's

terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's bid and/or proposal, and Contractor's printed terms, respectively.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than twenty-four (24) hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.15 Reserved (Cooperative Agreement).

Article 12 Department Specific Terms

12.1 Third-Party Beneficiaries. No third parties are intended by the Parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 Exclusion Lists and Employee Verification.

12.2.1 Contractor acknowledges that some or all of the Commodities that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 ("Notices to the Parties"), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement. Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor's workforce (including those who oversee Contractor's workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in

delivery of the Goods under this Agreement. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the delivery of the Goods pursuant to this Agreement, Contractor may have access to City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved (Payment Card Industry (“PCI”) Requirements).

13.3 Business Associate Agreement. The Parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 (“HIPAA”) and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”).

The Parties acknowledge that CONTRACTOR will:

1. Do **at least one** or more of the following:
 - A. Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis);
 - B. Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing a Goods to or for City including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or
 - C. Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors).

For purposes of this Agreement, Contractor is a Business Associate of CITY, as defined under HIPAA. Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

2. **NOT do any of the activities listed above in subsection 1;**

Contractor is not a Business Associate of CITY. A Business Associate Agreement and Attestations are not required for the purposes of this Agreement.

13.4 Protected Health Information. Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health

information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

13.5 Management of City Data.

13.5.1 Use of City Data. Contractor agrees to hold City Data received from, or collected or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City Data outside the continental United States is prohibited. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.6 Disposition of City Data. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.7 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

Article 14 MacBride And Signature

14.1 MacBride Principles – Northern Ireland.

The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

W.W. Grainger, Inc.

DocuSigned by:
ANNYSE ACEVEDO
D59F4BA358B4449...

DocuSigned by:
Peter Chu
634C648E7E4E4C4...

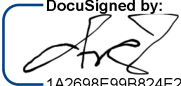
Annyse Acevedo
Supervising Purchaser
Office of Contract Administration

Peter Chu
Sr. Government Account Manager
100 Grainger Parkway
Lake Forest, IL 60045

City Supplier Number: 0000019315

Approved as to Form:

David Chiu
City Attorney

By: 
1A2698E99B824E2...
Duyen Nguyen
Deputy City Attorney

Approved:


9AEA44694D514E7...
Sailaja Kurella
Director of the Office of Contract Administration,
and Purchaser

A:	Green Purchasing Requirements
B:	Pricing and Shipping
C:	Regulatory and Compliance Requirements
D:	Reserved (BAA)
E:	Reserved (Forms P-12U-C and 12U-I)

Appendix A

Green Purchasing Requirements

A. Mandates for Environmental Purchasing Specifications:

1. The San Francisco Department of Environment (SFE) enforces the City's Environmentally Preferable Purchasing (EPP) Program, which promotes the purchase of products and service that meet our environmental, health, cost, and performance criteria by incorporating relevant specifications into contracts.
2. The specifications for this contract are derived largely from the City's environmental ordinances and other policies including, but not limited to:
 - **San Francisco's Environmentally Preferable Purchasing (EPP) Ordinance** (SF Environment Code, Chapter 2).
 - **San Francisco's Resource Conservation Ordinance** (SF Environment Code, Chapter 5).
 - **San Francisco's Enhancement of Recycling and Resource Conservation Order** (Mayor's Executive Order, 08-02).
 - **San Francisco Department of Environment's Precautionary Purchasing Principle Adopting Approved Alternative Products**.

B. General Requirements for Contractor:

1. Contractor shall:
 - a. Offer products that comply with federal, state, and local regulations;
 - b. Follow the environmental laws, rules, and regulations referenced above; and
 - c. At City's request, provide an online shopping system that:
 - i. Displays green products before other products on static pages and in search results.
 - ii. Identifies the following features for each product:
 - 1) Environmental certifications, if any;
 - 2) Percentage of post-consumer recycled content (PCRC) used to make the product;
 - 3) Percentage of total recycled content used to make the product; and
 - 4) Where applicable, if the item or battery is rechargeable and non-rechargeable.
2. Allows SFE to block the sale of specific items or category of items to City when those items or categories of items are deemed prohibited under the environmental laws, rules, and regulations referenced above. A request to block an item or category of items must be honored within twenty-one (21) days of City's request to Contractor.
3. Within thirty (30) days of being informed by City that its green product claims do not match those on the manufacturer's or ecolabel's websites, Contractor must, provide evidence supporting its claims, or:

- a. Replace the product with a verified green product, if available, at no cost to the City; or
- b. Correct inaccurate claims in its online shopping system.

C. Green Purchasing Requirements by Product Categories:

Category	Mandatory Requirements	Suggested Requirements
CLEANING CHEMICALS	<p>“Cleaning Chemicals” as defined below must be certified as one or more of the following:</p> <ol style="list-style-type: none"> 1) Green Seal; 2) UL EcoLogo; 3) US EPA’s Safer Choice Program (formerly the Design for Environment Program); and/or 4) Cradle to Cradle Products Innovation Institute – Gold Level. <p>Cleaning Chemicals includes ONLY the following product categories:</p> <ul style="list-style-type: none"> • Abrasive Cleaners (such as cream cleansers) • Bathroom Cleaners (not-disinfecting), Carpet Cleaners, and Spotters • Cleaner Degreasers • Dish Detergents • Drain Cleaners and Maintainers • Floor Finishers/Strippers • Furniture Polish • General Purpose Cleaners • Glass Cleaners • Metal Polish • Odor Control Products • Toilet Bowl Deodorizers (hangers, pucks) • Floor Cleaners • Cleaning chemicals in aerosol containers • Concentrated cleaning chemicals that are not in a spill-resistant package that prevents access to the undiluted chemical 	<ol style="list-style-type: none"> 1) Surface sanitizers and disinfectants must be registered by the US EPA for use in California and may only contain the following active ingredients: hydrogen peroxide, citric acid, lactic acid, thymol, and/or ethanol. 2) Cleaning chemicals that are fragrance-free, concentrated and in closed-loop packaging that prevents the user from accessing the concentrated cleaning solution.
GRAFFITI REMOVERS	<ol style="list-style-type: none"> 1) Graffiti removers must meet the following requirements: Cannot contain methylene chloride. 2) VOC content must be 30% or less for non-aerosol graffiti removers and 50% or less for aerosol products, using the definition of VOCs in the CARB Consumer Product Regulation. 	<p>Graffiti removers with one or more of the following certifications:</p> <ol style="list-style-type: none"> 1) US EPA’s Safer Choice Program; 2) Green Seal, UL (under its EcoLogo Program); and/or 3) Cradle to Cradle.
MATERIAL HANDLING, STORAGE AND PACKAGING	<p>Packaging materials must meet the following requirements:</p> <ol style="list-style-type: none"> 1) Cannot be made of polystyrene foam (styrofoam), 2) Corrugated cardboard boxes must meet <u>US EPA’s Comprehensive Procurement Guidelines</u> for recycled content, and 	<ol style="list-style-type: none"> 1) Reusable shipping containers; 2) Packaging that is easily recyclable, made of recycled content, or certified as commercially compostable by the Biodegradable Products Institute (BPI); or 3) Storage cabinets and shelves with one of the following third-party certifications: <ol style="list-style-type: none"> a) UL GREENGUARD Gold,

Category	Mandatory Requirements	Suggested Requirements
	3) All other packing materials must meet <u>US EPA's Comprehensive Procurement Guidelines</u> for recycled content.	b) SCS Indoor Advantage Gold, or c) Cradle to Cradle.
BATTERIES	None	Pre-charged nickel-metal hydride (NiMH) rechargeable batteries in the following sizes: AA, AAA, and C & D that are: 1) Low self-discharge: (i.e., they maintain at least 80% of their capacity (charge) after 1 year in storage, or 75% after 3 years in storage); and 2) Meet the following minimum capacity rating (measured in mAh): a) AA Rechargeable Batteries: 2000 mAh, b) AAA Rechargeable Batteries: 800 mAh, c) C Rechargeable Batteries: 3000 mAh, and d) Rechargeable Batteries: 8000 mAh.
FLASHLIGHTS	None	Flashlights, lanterns, and headlamps that: 1) Have a built-in nickel-metal hydride rechargeable battery pack; 2) Use LEDs as the lighting source; and 3) Use AA or AAA batteries (rather than C or D batteries).
PAINTS AND COATINGS, (e.g., floor coatings, heat-resistant coatings, spray paint, athletic field marking paints, dry fall coatings, stains, varnishes, zone-marking paints, etc.)	Latex paints must be certified by one of the following third-party entities: 1) Green Seal – a list of certified products can be found at greenseal.org ; 2) Cradle to Cradle – a list of certified products can be found at c2ccertified.org/products/registry ; 3) Master Painters Institute (MPI under its Extreme Green standard) – a list of Extreme-Green certified products can be found at specifygreen.com/APL/ProductIdxByMPInum.asp ; <u>and</u> 4) Greenwise Gold – a list of certified products can be found at greenwisepaint.com/ .	Products that meet one or more of the following standards: 1) Green Seal-certified; 2) Green Seal – a list of certified products can be found at greenseal.org ; 3) Cradle to Cradle – a list of certified products can be found at c2ccertified.org/products/registry ; 4) Master Painters Institute (MPI under its Extreme Green standard) – a list of Extreme-Green certified products can be found at specifygreen.com/APL/ProductIdxByMPInum.asp ; 5) Greenwise Gold – a list of certified products can be found at greenwisepaint.com/ ; 6) ENERGY STAR certified (for reflective coatings); 7) UL GREENGUARD certified (low-emitting); and 8) Compliant with the South Coast Air Quality Management District (SCAQMD) VOC Limits.
PAINT REMOVERS	Paint removers cannot contain methylene chloride.	Paint removers that do not have a Prop 65 warning (e.g., “This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.”)
ANTIMICROBIAL COATINGS	1) Products cannot have antimicrobial or antibacterial coatings. 2) With the exception of triclosan and triclocarban, which are explicitly prohibited, antimicrobial chemicals added to raw materials for the sole purpose of preserving the product are exempt.	
ADHESIVES, CAULKS, AND SEALANTS - This	Construction, carpet, and flooring adhesives must have one or more of the following third-party certifications: 1) Green Seal	Caulks and other types of sealants that meet one or more of the following standards: 1) UL EcoLogo certified

Category	Mandatory Requirements	Suggested Requirements
category includes general construction, carpet and flooring adhesives, as well as silicone sealants.	2) Cradle to Cradle 3) UL GREENGUARD Gold 4) SCS FloorScore 5) SCS Indoor Advantage Gold	2) UL GREENGUARD Gold certified 3) SCS FloorScore certified 4) SCS Indoor Air Advantage Gold certified 5) Cradle to Cradle certified Complies with the South Coast Air Quality Management District (SCAQMD) Volatile Organic Compound (VOC) limit of 100 grams/liter VOCs
INDUSTRIAL FURNITURE	Furniture cannot include upholstered furniture.	Items with the TB117-2013 label together with a label that says "contains NO added chemical flame retardants".
PLASTIC PRODUCTS	Plastic products: 1) Must not be labeled "biodegradable," "oxy-degradable," "degradable," "marine degradable," "decomposable." 2) Cannot consist of polystyrene foam (e.g., Styrofoam).	None.
HAND SOAPS	Cannot be antimicrobial.	Certified by one or more of the following: 1) <u>Green Seal</u> , 2) <u>UL EcoLogo</u> , 3) <u>US EPA's Safer Choice</u> , and 4) <u>Cradle to Cradle</u> Gold Level.
RECYCLED CONTENT PRODUCTS –	Products in the following categories must meet or exceed the Comprehensive Procurement Guidelines (CPG) of the US Environmental Protection Agency (EPA), except in cases when there is no alternative available: 1) Construction Products: Building insulation, roofing materials, structural fiberboard, shower and restroom dividers, etc. 2) Landscaping Products: Compost, mulch, garden and soaker hoses, plastic lumber, etc. 3) Park and Recreation Products: Picnic tables, plastic fencing, etc. 4) Transportation Products: Traffic cones, barricades, etc. 5) Vehicular Products: Re-refined lubricating oils, etc. 6) Miscellaneous Products: Mats, signage, sorbents, etc. 7) Non-Paper Office Products: recycling, composting and trash bins, plastic bin liners, etc. 8) Industrial wipers.	

D. Mandatory Purchasing Reports:

1. Reports required by this section are required by Office of Contract Administration/Purchasing in Section 4.11, "Usage Reports by Contractor" of the Agreement.
2. On a quarterly basis, Contractor shall provide reports to Office of Contract Administration/Purchasing and the San Francisco Environment Department for the duration of this contract. Reports shall be provided of each subsequent quarter with a final report provided yearly. Reports will be due and expected fifteen (15) days after each quarterly period. Deadlines for these reports are:

April 15 (for January 1 – March 31 quarter)

July 15 (for April 1 – June 30 quarter)

September 15 (for July 1 – September 30 quarter)

January 15 (for October 1 – December 31 quarter)

- 3.** The report shall accurately list the following for each purchase:
 - a.** Product name and number
 - b.** Product attributes
 - c.** Item price, quantity ordered, and extended price
 - d.** City department
 - e.** Date of purchase
 - f.** Product category, National Institute of Governmental Purchasing (NIGP) Commodity/Services Code (ideally), or other commodity code
 - g.** The following product attributes:
 - i.** Environmental certifications, if any, including but not limited to ENERGY STAR, Green Seal, UL EcoLogo, Cradle to Cradle, EPEAT, SCS Indoor Advantage, UL GREENGUARD, BPI, Design Lights Consortium, WaterSense, EPA CPG, South Coast Air Quality Management District VOC Limits, RoHS, etc.;
 - ii.** Where applicable, if the item or battery is rechargeable and non-rechargeable;
 - iii.** Percentage of post-consumer recycled content (PCRC) used to make the product; and
 - iv.** Percentage of total recycled content used to make the product.

- 4.** The reports shall be submitted in the electronic format prescribed and given to the Contractor by the City. The required electronic Excel format will be provided by the City and will be completed by the Contractor in its entirety, and returned to the City without changing the format at the end of each quarterly period. On or before January 15 of each year, Contractor will supply the required yearly report. Contractor must adhere to the standardized responses provided in the template. Contractor must report all items ordered by City departments and offices, whether or not they are part of this contract.

Appendix B Pricing and Shipping

<p>Categories of Products Prohibited under this Contract</p>	<p>The following categories of Goods cannot be purchased under this Agreement because City departments must use OCA contracts specifically awarded for the following categories:</p> <ol style="list-style-type: none"> 1) Office supplies including paper, inks, and toners; 2) Foodware such as disposable products including, but not limited to, cutlery, compostable paper, garbage liners, and trays; 3) Janitorial paper products such as paper towels, bath tissue, and toilet seat covers; 4) Upholstered furniture; and 5) Uniforms and shoes. <p>The following categories of Goods cannot be purchased under this Agreement because they must comply with additional City requirements that have not been incorporated into this Agreement:</p> <ol style="list-style-type: none"> 1) Bottled and packaged water, unless approved by OCA (See SF Environment Code Chapter 24, Section 2403); 2) Pesticides, with the exception of US EPA-registered disinfectants and sanitizers (See SF Environment Code Chapter 3); and 3) Sewn textiles and garments (See SF Administrative Code Chapter 12U). 																																				
<p>Minimum pricing discount by product category</p>	<ol style="list-style-type: none"> 1. As per the Sourcewell Contract, all goods will be priced at or below the Contract Reference Price “CRP” Discount provided below under column A. Grainger also offers an Enhanced Discount of three percent (3%) above the CRP Discount shown under Column B if City (a) purchases \$25,000 in Total Member Purchases during the contract year, and (b) increases its spend annually by at least twelve percent (12%) over the preceding year. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;">Category</th> <th style="text-align: center;">Column A “CRP Discount”</th> <th style="text-align: center;">Column B “Enhanced Discount”</th> </tr> </thead> <tbody> <tr><td>Abrasives</td><td style="text-align: center;">7%</td><td style="text-align: center;">10%</td></tr> <tr><td>Adhesives/Sealants/Tape</td><td style="text-align: center;">10%</td><td style="text-align: center;">13%</td></tr> <tr><td>Air Filters</td><td style="text-align: center;">40%</td><td style="text-align: center;">43%</td></tr> <tr><td>Cleaning</td><td style="text-align: center;">22%</td><td style="text-align: center;">25%</td></tr> <tr><td>Electrical Supplies</td><td style="text-align: center;">23%</td><td style="text-align: center;">26%</td></tr> <tr><td>Electronics/Appliances/Batteries</td><td style="text-align: center;">19%</td><td style="text-align: center;">22%</td></tr> <tr><td>Fasteners</td><td style="text-align: center;">32%</td><td style="text-align: center;">35%</td></tr> <tr><td>Hand Tools</td><td style="text-align: center;">14%</td><td style="text-align: center;">17%</td></tr> <tr><td>HVAC Supplies</td><td style="text-align: center;">17%</td><td style="text-align: center;">20%</td></tr> <tr><td>Lab Supplies</td><td style="text-align: center;">15%</td><td style="text-align: center;">18%</td></tr> <tr><td>Lighting</td><td style="text-align: center;">22%</td><td style="text-align: center;">25%</td></tr> </tbody> </table>	Category	Column A “CRP Discount”	Column B “Enhanced Discount”	Abrasives	7%	10%	Adhesives/Sealants/Tape	10%	13%	Air Filters	40%	43%	Cleaning	22%	25%	Electrical Supplies	23%	26%	Electronics/Appliances/Batteries	19%	22%	Fasteners	32%	35%	Hand Tools	14%	17%	HVAC Supplies	17%	20%	Lab Supplies	15%	18%	Lighting	22%	25%
Category	Column A “CRP Discount”	Column B “Enhanced Discount”																																			
Abrasives	7%	10%																																			
Adhesives/Sealants/Tape	10%	13%																																			
Air Filters	40%	43%																																			
Cleaning	22%	25%																																			
Electrical Supplies	23%	26%																																			
Electronics/Appliances/Batteries	19%	22%																																			
Fasteners	32%	35%																																			
Hand Tools	14%	17%																																			
HVAC Supplies	17%	20%																																			
Lab Supplies	15%	18%																																			
Lighting	22%	25%																																			

Lubrication	10%	13%
Material Handling/Storage/Packaging	15%	18%
Motors	19%	22%
Outdoor Equipment	12%	15%
Paint, Equipment, & Supplies	10%	13%
Pneumatics	11%	14%
Pumps	7%	10%
Power Tools	11%	14%
Power Transmission	19%	22%
Safety	19%	22%
Security	15%	18%
Test Instruments	7%	10%
Welding, Machining, Cutting	10%	13%
All other product categories	5%	5%

2. **Hot List Pricing.** At any time during this Contract, Contractor may offer a specific selection of Goods at discounts greater than those listed in the Sourcewell Contract. Goods may be added or removed from the Hot List at any time through Sourcewell. Hot List program and pricing may be used to discount and liquidate close-out and discontinued Goods as long as those close-out and discontinued items are clearly identified to City. Hot List Pricing must be published and made available to City.
3. **Quotes.** When providing pricing quotes to City, all pricing quoted must reflect City’s total cost of acquisition. This means that the quoted cost is for delivered Goods that are operational for their intended purpose and includes all costs to City’s requested delivery location. Regardless of the payment method chosen by City, the total cost associated with any purchase must always be disclosed in the pricing quote to City at the time of purchase.
4. **Price Adjustments.** Price Adjustments shall be made in accordance with Section 4 of the Sourcewell Contract.

Discounts on high-volume orders

Member Market Basket: In addition to the Sourcewell Hot List, Grainger offers the ability for the City to create a custom Market Basket of up to 300 items. The City can select a custom Market Basket consisting of the facility MRO supplies and equipment products the City most frequently purchases. The Grainger North America sales team will work with the City seeking to consolidate, standardize, and identify a product list and price.

"Sourced" products" and

1. Unless otherwise agreed to in writing between Grainger and City, Sourced Products are shipped with all costs imposed by the carrier

<p>"nonstandard options"</p>	<p>related to the shipment paid by Grainger and charged to City on the City's invoice. If the City chooses to ship freight collect, shipments will be made to the City freight collect using carrier designated by the City. C.O.D. shipments are not permitted. Receipts for freight charges will not be furnished. Title and risk of loss will be transferred to the City upon tender of the shipment to carrier.</p> <ol style="list-style-type: none"> 2. An RGA (Returned Goods Authorization) must be issued by Grainger prior to returning Sourced Products. The RGA is good for thirty (30) days after issuance. Returns will be sent directly to the sourced supplier, and not to a Grainger location, unless otherwise instructed in the RGA. Returned Sourced Products may incur a restocking fee based upon the Sourced Product sell price, plus freight paid by Grainger and added to the invoice, unless the shipment of Sourced Products was the result of Grainger or manufacturer error or the Sourced Products are defective. Special manufactured and custom engineered products are sold on a "FINAL SALE" basis only and no changes, cancellation, returns or refunds are allowed, except if Sourced Products are defective. 3. In the event that Grainger agrees to stock an agreed upon quantity of sourced products requested by City, upon expiration or termination of the Agreement, the City agrees to purchase all remaining stocked sourced product only to the extent Contractor cannot sell such sourced product to other entities within twelve (12) months after expiration or termination of the Agreement.
<p>Shipping</p>	<ol style="list-style-type: none"> 1. General. <ol style="list-style-type: none"> a. No minimum quantity required. b. Free standard ground delivery. c. Twenty-four (24) to forty-eight (48) hour guaranteed delivery time for in-stock products within the forty-eight (48) contiguous United States. d. Free freight on all UPS ground and LTL (as defined below) orders originating from Grainger CFCs (as defined below) and shipped directly from suppliers. e. Carriers include UPS, FedEx, USPS, and other LTL carriers. 2. Same-Day Shipping Guarantee. If a qualified, in-stock order is placed by the 8 p.m. EST, national cut-off time, the order is guaranteed to ship the same day. The delivery time-frame is contingent upon the requirements of the Grainger Same-Day Shipping Guarantee below. Grainger will guarantee same-day shipping if: <ol style="list-style-type: none"> a. the order is received by Grainger at one of our customer fulfillment centers (CFCs) before the applicable cut-off time on an operating business day; b. the item is a national catalog item; and c. the exclusions described below do not apply.

- 3. Next-Day Delivery Upgrade.** Grainger will upgrade qualifying orders to Next-Day Air Saver at the customer's request (additional charges may apply). The Next-Day Delivery upgrade only applies to standard UPS Ground shipping orders, and does not apply to orders shipped via Freight Saver shipping method. Qualifying orders will be delivered on the next regular business day, or on a weekend day for an additional charge. The upgrade will apply if:
- the order is received by Grainger at one of our CFCs before the applicable cut-off time on an operating business day;
 - the item is a national catalog item;
 - the order is twenty (20) pounds or less and is not too large to ship by air;
 - the order cannot be delivered to the customer the next day through our Ground Network; and
 - the exclusions described below do not apply.
- 4. Exclusions.** Neither the Same-Day Shipping Guarantee nor the Next-Day Air Saver Upgrade cover:
- orders to non-qualified customers or those outside of the continental U.S.;
 - orders for items that are not in stock;
 - orders for hazardous materials, machinery, or items that require customized lengths, set-up, or special packaging;
 - circumstances beyond Grainger's control (for example, computer or electronic interruptions, strikes, natural disasters, severe weather conditions, war, or supplier manufacturing deficiencies);
 - Freight Saver shipments;
 - "less-than-truckload" (LTL) shipments, orders shipped by non-scheduled carriers;
 - shipments from branch locations, replacement orders, and vendor-managed inventory (VMI) orders;
 - first orders for new accounts;
 - direct ship items; and
 - orders requiring credit review.
- 5. Hazardous Materials.** Hazardous materials require special handling. Any item containing such materials may be subject to local, state, and federal regulations, which may delay or prohibit shipments. Grainger makes no service level guarantees regarding such items.
- 6. Return of Defective Goods.** Contractor must arrange for and pay for the return shipment on Goods that arrive in a defective or inoperable condition. City and Sourcewell may declare Contractor in breach of this Contract if Contractor intentionally delivers substandard or inferior Goods. Defective items shall be subject to Section 3.3.2, "Payment Limited to Satisfactory Delivery of Goods" of the Agreement.

7. Other. Other terms and fees may apply for shipment of product that requires special handling, is HAZMAT, or is classified as oversize. Other terms and fees may apply for shipment of product to Alaska and Hawaii as well as export orders and orders placed for non-stocked products. In such instances, charges and fees incurred for additional services, such as expedited delivery, carrier or special handling by the carrier, air freight, freight collect, export orders, hazardous materials, customer's carrier, shipments outside the contiguous U.S., or other special handling by the carrier will be paid by City.

Appendix C

Regulatory and Compliance Requirements

1. Delivery

Contractor must comply with the following delivery requirements.

- A. **Notice of Delivery:** Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department with no additional costs incurred.
- B. **Hours of Delivery:** All deliveries shall be made and accepted at the City location indicated by the ordering department between the hours of 8:00 A.M. and 5:00 P.M. (adjust hours if needed)
- C. **Substitutions:** No substitutions will be allowed unless approved in advance in writing by City.
- D. **Emergency Deliveries:** Emergency deliveries shall be delivered by best means possible. Should the emergency delivery cause City to incur additional costs not contemplated by this Agreement, Contractor shall obtain City's prior approval. Contractor shall notify City of the estimated time of delivery.
- E. **Back Orders:** Contractor shall notify the ordering department immediately if it is unable to deliver the items and/or quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered items. Department may reject back-ordered items at no additional costs incurred to the City. In the event that back-ordered items are delayed in excess of five (5) working days, the City reserves the right to reject partial shipment or cancel the item(s) ordered from the Agreement, at no additional cost incurred to the City.
- F. **Packing Slips:** All deliveries must include a packing slip and must provide the following information:
 - 1. Complete description including manufacturer's name and part number
 - 2. Quantity ordered
 - 3. Agreement number and contract item numbers
 - 4. Back-ordered items and amount back-ordered
 - 5. Date back-ordered items will be delivered
 - 6. Purchase order number

2. Other Requirements

- A. **Hours of Operation:** Contractor must maintain normal business hours of at least 8:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the Agreement, and be open at all times during that period.
- B. **Support:** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under

this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. – 5:00 P.M.).

- C. **ADA Compliance:** Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding handicapped persons' accessibility.
- D. **Infectious Disease Terms:** Contractors required to perform physical activities on City property that places Contractor or its employees in proximity to medical patients, including but not limited to San Francisco Department of Public Health facilities where patient care or counseling is performed, shall be subject to the following requirements, as applicable:

1. Infection Control, Health and Safety:

- a. Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents and subcontractors as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.
- b. Contractor must demonstrate personnel policies/procedures for protection of its employees, agents, subcontractors and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.
- c. Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.
- d. Contractor must demonstrate personnel policies/procedures for COVID-19 exposure control consistent with CDC recommendations, Cal/OSHA regulations, SF DPH Health Orders, Directives, and Guidance. The Contractor's attention is directed to Cal/OSHA's new 8 CCR 3205 COVID-19 Prevention Emergency Temporary Standard and/or any successor regulations.
- e. Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.
- f. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for

reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

- g. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
- h. Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents and subcontractors, including safe needle devices, and provides and documents all appropriate training.
- i. Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

2. Aerosol Transmissible Disease Program, Health and Safety:

- a. Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol Transmissible Diseases (<http://www.dir.ca.gov/Title8/5199.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.
- b. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
- c. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
- d. Contractor assumes responsibility for procuring all medical equipment and supplies for use by their employees, agents, subcontractors including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.
- e. If/when Contractor determines that they do not fall under the requirements of 8 CCR 5199 Contractor is directed to Cal/OSHA's Emergency Temporary Standard for COVID-19, 8 CCR 3205, which applies to all employers who do not fall under 8 CCR 5199 but for who's employees have potential for exposure to COVID-19.

**Appendix D
Reserved (BAA).**

Appendix E
Reserved (Forms P-12U-C and 12U-I).



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
 Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 240838

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4
 (S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
 A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Gloria Yuen	6286521635
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
GSA Office of Contract Administration	gloria.yuen@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR W.W. Grainger, Inc.	TELEPHONE NUMBER 847-535-1000
STREET ADDRESS (including City, State and Zip Code) 100 Grainger Parkway, Lake Forest, IL 60045-5201	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 240838
DESCRIPTION OF AMOUNT OF CONTRACT \$32,000,000		
NATURE OF THE CONTRACT (Please describe) Provide industrial supplies for the City departments; increasing the contract amount by \$25,000,000 for a total contract amount not to exceed \$32,000,000.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Macpherson	DG	Board of Directors
2	Macpherson	DG	CEO
3	Berardinelli-Krantz	Nancy	Other Principal Officer
4	Fortin	Matt	Other Principal Officer
5	Merriwether	Deidra	CFO
6	Robbins	Paige	Other Principal Officer
7	Thomson	Laurie	Other Principal Officer
8	Greenhouse	Barry	Board of Directors
9	LeRoy	Jonny	Other Principal Officer
10	walker	Brian	Other Principal Officer
11	Adkins	Rodney	Board of Directors
12	Davis	George	Board of Directors
13	Jaspon	Katherine	Board of Directors
14	Klein	Christopher	Board of Directors
15	Levenick	Stuart	Board of Directors
16	Miller	Cindy	Board of Directors
17	Novich	Neil	Board of Directors
18	Perez	Beatriz	Board of Directors
19	Santi	E. Scott	Board of Directors

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Williams	Susan	Board of Directors
21	Watson	Lucas	Board of Directors
22	White	Steven	Board of Directors
23	Hailey	V. Ann	Board of Directors
24	The Vanguard Group		Shareholder
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------



DATE: August 27, 2024
TO: Angela Calvillo, Clerk of the Board
FROM: Sailaja Kurella, Director of Office of Contract Administration (OCA) and Purchaser
SUBJECT: Resolution to approve amendment to PeopleSoft Contract ID 1000030381 (TC74106A) with W.W. Grainger, Inc.

Enclosed is the resolution authorizing the Office of Contract Administration (“OCA”) to amend PeopleSoft Contract ID 1000030381 (OCA Term Contract 74106A) with W.W. Grainger, Inc. (“Grainger”), increasing the contract not-to-exceed (NTE) amount from \$7,000,000 to \$32,000,000, with no change to the initial contract term end date of November 8, 2026.

Contract Overview

Contract 1000030381 with Grainger was executed on January 12, 2024 with an initial term ending of November 8, 2026, with the option to extend through November 8, 2028. The contract currently has a NTE of \$7,000,000. Contract 1000030381 is an as-needed contract available to all City departments for the purchase of goods and supplies used in the manufacturing, construction, and maintenance of industrial equipment and infrastructure (“industrial supplies”). Industrial supplies can range from raw materials like metals, plastics, and chemicals to finished products like machinery, tools, and safety equipment.

For the purpose of this resolution memo, all referenced data is as of August 16, 2024.

Purchasing Authority

San Francisco Administrative Code Section 21.16(b) authorizes OCA to select contractor pursuant to solicitation conducted by other government entities and/or national cooperatives. Here, Grainger was selected pursuant to Solicitation No. 091422 for Industrial and Building-Related Supplies and Equipment issued on July 27, 2022 by Sourcewell, a State of Minnesota local government unit and service cooperative that conducts solicitations for commonly used goods and services on behalf of state and local governments located in the United States and Canada. In response to its solicitation, Sourcewell received twenty proposals, of which nineteen were evaluated and scored. The criteria used to evaluate each proposal consisted of pricing, financial viability and marketplace success, ability to sell and deliver service, marketing plan, valued added attributes, warranties and depth and breadth of offered products. Of the 19 evaluated proposals, Grainger was ranked number 1.

OCA could have limited its selection to the top ranked proposer, Grainger. However, based on the robustness of Solicitation No. 091422 and the number of proposals evaluated, OCA determined it would be in the interest of City to also enter into contracts with the proposers who ranked 2 (Motion Industries, Inc), 3 (Fastenal Company), 4 (White Cap, LP) and 5 (Sid Tool Co.). In so doing, OCA sought to ensure even further competition between suppliers available for City departments to choose from when purchasing industrial supplies. Ultimately, however, only Fastenal Company, White Cap, LP and Sid Tool Co. agreed to move forward with a contract with OCA. Separately, OCA also entered into an agreement with Global Equipment Co. bringing the total number of



contracts for Industrial Supplies to five. A summary of each as-needed, Citywide industrial supplies contract is provided below in Table 1.

Table 1: Summary of As-Needed Citywide Contracts for Industrial Supplies as of August 16, 2024

Supplier Name	OCA TC Number	PeopleSoft Contract ID	Contract Start Date	Contract End Date	Initial Contract NTE Amt
W.W. Grainger, Inc	TC74106A	1000030381	1/12/2024	11/8/2026, with option to extend to 11/8/28	\$7,000,000
Fastenal Company	TC74106B	1000030780	6/7/2024		\$7,000,000
White Cap, LP	TC74106C	1000031095	2/16/2024		\$7,000,000
Sid Tool Co., dba MSC Industrial Supply Inc.	TC74106D	1000030247	12/1/2023		\$7,000,000
Global Equipment Co	TC74106E	1000031014	6/7/24	11/30/2024, with option to extend to 11/30/26	\$7,000,000

Contract Pricing

Contract 1000030381 provides catalogue discounts by product categories which range from 5% to 40% off Grainger’s list price. Grainger also offers an “Enhanced Discount” where additional 3% discount if City purchases \$25,000 or more in goods during the contract year and also increases its spend annually by at least twelve percent (12%) over the preceding year.

Contract Usage

Contract 1000030381 with Grainger was executed on January 12, 2024 for \$7,000,0000. Since its execution approximately 7 months ago, 24 City agencies have encumbered \$6,046,212 in purchase orders against this contract, averaging \$851,508 per month. The primary users of this contract are the San Francisco International Airport (“AIR”), the San Francisco Public Utilities Commission (“PUC”), San Francisco Department of Emergency Management (“DEM”), the City Administrator’s Office (“ADM”), San Francisco Department of Public Health (“DPH”), San Francisco Police Department (“POL”) and the San Francisco Metropolitan Transportation Agency (“MTA”). A complete breakdown of total PO encumbrances by contract and agency is provided in Table 2.

Table 2: Breakdown of Total PO Encumbrances by City Departments as of August 16, 2024

Department	Total
AIR	\$ 1,670,793
PUC	\$ 957,353
DEM	\$ 694,810
ADM	\$ 582,893
DPH	\$ 378,963
POL	\$ 330,000
MTA	\$ 293,276
All Others	\$ 1,138,124
Total	\$ 6,046,212

Not to Exceed Amount Calculations



Historically, the primary source of industrial supplies to City departments has been Grainger and, more recently, MSC. Between 2019 and 2023, City departments encumbered an average of \$528,391 per month with Grainger. As detailed in Table 3, City departments' PO encumbrances ranged from using OCA contracts, department contracts and no contracts.

Table 3: Average Monthly PO Encumbrances for Grainger between 2019-2023

Row Labels	2019	2020	2021	2022	2023	5-Year Total	Annual Avg	Monthly Avg
1000001664 (OCA Contract ending 6/30/2020)	\$ 1,332,268	\$ 521,038				\$ 1,853,307		
1000018631 (OCA Contract ending 12/31/2023)		\$ 2,374,292	\$ 4,739,050	\$ 6,049,127	\$ 5,025,476	\$ 18,187,944	\$ 4,008,369	\$ 334,031
1000016395 (OCA Contract - Tolet Paper - ending 12/31/2023)				\$ 595		\$ 595		
1000002564 (DPH)		\$ 118	\$ 2,358			\$ 2,476	\$ 495	\$ 41.27
1000002899 (DPH)	\$ 384,078	\$ 368,747	\$ 399,848	\$ 580,622		\$ 1,733,295	\$ 346,659	\$ 28,888.25
1000016647 (WAR)	\$ 12,301					\$ 12,301	\$ 2,460	\$ 205.01
No Contract	\$ 3,603,910	\$ 2,728,763	\$ 967,260	\$ 1,062,623	\$ 1,551,014	\$ 9,913,570	\$ 1,982,714	\$ 165,226.17
5-Year Total	\$ 5,332,557	\$ 5,992,958	\$ 6,108,515	\$ 7,692,966	\$ 6,576,490	\$ 31,703,487	\$ 6,340,697	\$ 528,391

OCA could have set the initial NTE for Contract 1000030381 with Grainger using Grainger's above average monthly PO encumbrance data from 2019 to 2023. However, because OCA was now entering into five contracts for industrial supplies, it could not anticipate how City departments would ultimately use each contract. Therefore, the initial NTE amount of each contract was set to \$7,000,000, with the expectation that each contract NTE would be increased based on actual usage. Since the execution of each of these five contracts, and as Table 4 details, it has become apparent that the bulk of City departments' PO encumbrances for industrial supplies remains with Grainger. Further, total average PO encumbrances using Contract 1000030381 with Grainger now totals \$851,508 per month. This is a 61% increase from City departments' average monthly PO encumbrances with Grainger between 2019 and 2023.

Table 4: Average Monthly PO Encumbrances by Citywide Contract for Industrial Supplies as of August 16, 2024

Supplier Name	OCA TC Number	PeopleSoft Contract ID	Contract Start Date	Average Monthly Encumbrance Amount
W.W. Grainger, Inc	TC74106A	1000030381	1/12/2024	\$851,508
Fastenal Company	TC74106B	1000030780	6/7/2024	\$17,122
White Cap, LP	TC74106C	1000031095	2/16/2024	\$6,104
Sid Tool Co., dba MSC Industrial Supply Inc.	TC74106D	1000030247	12/1/2023	\$224,477
Global Equipment Co	TC74106E	1000031014	6/7/24	\$121

Based on total PO encumbrances since the execution of Contract 1000030381 with Grainger, Grainger will be out of funds by October 6, 2024. It is on this basis that OCA now seeks increase the NTE amount of Contract 1000030381 with Grainger by \$25,000,000 for a new contract NTE amount of \$32,000,000. The basis for this amount is detailed in Table 5 below. This increase will ensure adequate contracting capacity through the contract's initial term end date of November 8, 2026. Should the contract be extended through November 8, 2028, OCA will seek to increase their NTE amounts at that time.

Table 5: NTE Calculations for Contracts 1000030381 with Grainger based on PO Encumbrance data as of August 16, 2024



Contract 1000030381 with Grainger Start Date: Jan 12, 2024 End Date: November 8, 2026	
Total Encumbered Funds	\$6,046,212
Avg Monthly Encumbrances Since Contract Start Date	\$851,508
Number of Months to Contract End Date	27
Total Funds Needed through Contract End Date	\$22,813,255
Less Remaining Contract Balance in PeopleSoft	\$1,339,640
Plus Contingency (15%)	\$3,421,988
Total Additional Funds Needed through Contract End Date	\$24,895,604

Conclusion

As demonstrated by the high usage of multiple City departments, Contract ID 1000018631 with Grainger is critical for satisfying City departments’ needs for essential industrial goods. Approval of this resolution will allow City departments to continue procuring these goods in a streamlined and cost-efficient manner.

If you have any questions or require additional information, please contact Gloria Yuen on my team at (628) 652-1635.

Enclosures:

1. Contract ID 1000030381 (TC#74106A) Industrial Supplies Agreement - Original
2. Contract ID 1000030381 (TC#74106A) Industrial Supplies Agreement – First Amendment Draft
3. Contract ID 1000030381 (TC#74106A) Resolution
4. S.F. Ethics Commission form 126(f)4, Notification of Contract Approval