

**MASTER AGREEMENT # 8496
FORM PARTICIPATING ADDENDUM**

NASPO ValuePoint
PARTICIPATING ADDENDUM



**Facilities Maintenance and Repair &
Operations (MRO) and Industrial Supplies**
Lead by the State of **Oregon**

Master Agreement #: 8496

Contractor: **W.W. Grainger, Inc. (Contractor)**

Participating Entity: **State of Oklahoma**

The following Goods or services are included in this Addendum:

- General Maintenance, Repair, and Operation Items as categorized in the Master Agreement.

The following Goods or services are not included in this Addendum:

- Oklahoma State Use Items
- Oklahoma Corrections Industries Items
- Any remaining items on other mandatory contracts

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the **Facilities Maintenance and Repair & Operations and Industrial Supplies** led by the State of Oregon for use by state agencies and other entities located in Oklahoma authorized by that State's statutes to utilize State contracts with the prior approval of the State's Purchasing Director.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *Oklahoma*. Issues of interpretation and eligibility for participation are solely within the authority of the State Purchasing Director.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name: Ryan Loughridge, Government Sales Manager, W.W. Grainger, Inc.
Address: 4314 Will Rogers PKWY, Oklahoma City, OK 73108
Telephone: (405) 409-6210
Fax: (405) 949-2348
Email: Ryan.Loughridge@Grainger.com

Participating Entity

Name: Lisa Bradley
Address: 5005 North Lincoln Blvd, Suite 300
Telephone: 405-522-4480
Email: Lisa.bradley@omes.ok.gov

4. Participating Entity Modifications or Additions to the Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

Lease Agreements: No lease agreements are permitted under this contract.

5. Subcontractors: No servicing subcontractors are permitted under this contract.

6. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

7. Definitions: Master Service Agreement for Services of Independent Contractor, Section 2 is hereby modified to add the following provision:

With respect to the State of Oklahoma, the defined term "Buyer" shall include the State of Oklahoma and (a) any board, commission, committee, department or other instrumentality or entity designated to act on behalf of the State of Oklahoma or a political subdivision thereof; (b) any governmental entity specified as a political subdivision of the State of Oklahoma pursuant to the Governmental Tort Claims Act, including, without limitation, (i) any associated institution, instrumentality, board, commission, committee department, or other entity designated to act on behalf of the political subdivision; and (ii) a county or local governmental entity; and (c) entities authorized to utilize contracts awarded by the State of Oklahoma via a multistate or multi-governmental contract.

8. Contract Term: Master Agreement for Services of Independent Contract, Section 3, is hereby modified to add the following provision:

This addendum shall be effective October 1, 2018 through June 30, 2019, with annual renewal options which agree with the Lead State's agreement to offer extension periods through June 30, 2023.

9. Payment: Master Service Agreement for Services of Independent Contractor, Section 17 is here by modified to add the following provision:

As applicable, the Parties shall comply with applicable Oklahoma law with respect to invoicing and making payments hereunder. Invoices are to be paid in arrears after products have been delivered and accepted or services provided and accepted. Pursuant to 74 O.S. § 85.44 (B), payment terms will be net 45. Interest on late payments by the State of Oklahoma is governed by 63 O.S. § 34.72.

10. Taxes: Master Service Agreement for Services of Independent Contractor, is hereby modified to add the following provision:

Oklahoma state agencies are exempt from the assessment of state sales, use, and excise taxes. Oklahoma state agencies and political subdivisions of the State of Oklahoma are exempt from federal excise taxes.

11. Delivery: Master Service Agreement for Services of Independent Contractor, Section 14 is hereby modified to add the following provision:

With respect to all Oklahoma-based transactions and all Oklahoma based Buyers, Contractor acknowledges and agrees that, pursuant to Okla. Stat. tit. 74, § 85.40, Oklahoma based Buyers shall not pay Contractor any travel expenses in addition to the total price of the products and/or services purchased; therefore, Contractor shall not invoice Oklahoma-based Buyers for any travel expenses in addition to the total price of the products and/or services purchased hereunder.

12. Inspection and Audit: Master Service Agreement for Services of Independent Contractor, is hereby modified to add the following provision:

For Oklahoma-based Buyers, as used in this clause, "records" includes invoices, statements of work, purchase order records, and such other relevant documents, regardless of whether such items are in written form, in the form of computer data, or in any other form. By accepting any purchase order from any Purchasing Entity hereunder, Contractor acknowledges and agrees that any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of the Participating Addendum and this Master Agreement.

Contractor is required to retain records relative to the Participating Addendum and this Master Agreement for the duration of the Effective Period and for a period of seven (7) years following completion and/or termination of this Participating Addendum. If an audit, litigation, or other action involving such records is started before the end of such seven-year period, the records are required to be maintained for two (2) years from the date that all issues relating to or arising out of the action are resolved, or until the end of such seven (7) year retention period, whichever is later.

13. Force Majeure: Master Service Agreement for Services of Independent Contractor, Section 29 is hereby modified to add the following provision:

With respect to all Oklahoma based transactions and all Oklahoma Buyers as well as Contractor's obligations thereto, for the avoidance of doubt, the definition of force majeure shall not include, or be related to, the following occurrences:

- (a) Late delivery of equipment, supplies, or materials or any oversold condition of the market; or
- (b) Inability of either the Contractor to acquire or maintain any required insurance, bond, license, or permit.

If any party is delayed by an event of force majeure, said party shall promptly provide written notice of the onset of such event to the other party. The party claiming delay and/or non-performance due to such event of force majeure shall use its best efforts to continue performance to the extent possible during such event and shall resume full performance as soon as reasonably practicable.

14. Indemnification: Master Service Agreement for Services of Independent Contractor, Section 33 is hereby modified to add the following provision:

The Contractor shall release, protect, indemnify, and hold all Oklahoma-based Buyers and their officers, agencies, employees, harmless from and against any damage, pricing, or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees, or subcontractors or volunteers.

IN CONNECTION WITH INDEMNIFICATION OF A BUYER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, CONTRACTOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT

NEGOTIATIONS FOR CONTRACTOR, CONTRACTOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION.

15. Compliance with Legal Obligations: Master Service Agreement for Services of Independent Contractor, is hereby modified to add the following provision:

For Oklahoma-based transactions and purchasing Entities, in connection with its performance of obligations under the terms of the Participating Addendum and this Master Agreement, the Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, that are, by their terms, expressly applicable to Contractor's delivery of products and/or services under the Participating Addendum and this Master Agreement and impose obligations upon Contract in its role as an Facilities MRO product provider, including, but not limited to, the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 58 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Title VII of the 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1980 and Executive Orders 11246 and 11375; and
- d) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93.

Without limiting the generality of the foregoing, the Contractor shall, at all times during the Effective Period, be registered as a business entity licensed to do business in the State of Oklahoma, have obtained and shall maintain a sales tax permit in the State of Oklahoma, and shall be current on all franchise-and/or other business-tax payments to the State of Oklahoma as applicable.

16. Public Records: Master Service Agreement for Services of Independent Contractor, is hereby modified to add the following provision:

For Oklahoma-based transactions and Purchasing Entities, Contractor acknowledges that all Oklahoma State agencies and certain other Purchasing Entities are subject to the Oklahoma Open Records Act. Vendor also acknowledges that such Customers will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the Contract specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no Contract provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

17. Governing Law: Jurisdiction: Master Service Agreement for Services of Independent Contractor, Section 35, is hereby modified to add the following provision:

The construction and effect of this Participating Addendum or order placed against the

contract by an Oklahoma-based Purchasing Entity shall be governed by and construed in accordance with the laws of the State of Oklahoma.

Venue for any claim, dispute, or action concerning an order placed against the contract by an Oklahoma-based Purchasing Entity or the effect of this Participating Addendum shall be in Oklahoma County, State of Oklahoma

18. Governing Law: Cancellation: Master Service Agreement for Services of Independent Contractor, Section 28, is hereby modified to add the following provision:

With respect to all Oklahoma-based transactions and all Oklahoma-based Buyers, Participating State may terminate any order if funds sufficient to pay its obligations under the Participating Addendum are not appropriated by the applicable state legislature, federal government, or other appropriate government entity or received from an intended third party funding source. In the event of such insufficiency, Participating State shall provide ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Buyer issues an order and has accepted the products and/or services under such order, the Buyer shall be obligated to pay for such products and/or services. In the event of termination of an order as provided in the foregoing, Participating State shall not be considered to be in default or breach under the Participating Addendum nor under the Master Agreement, nor shall it be liable for any further payments ordinarily due under, with respect to, related to, or arising out of such order, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

19. Registration of Contractor: In order to receive payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: https://www.ok.gov/DCS/Central_Purchasing/Vendor_Registration/index.html

20. Contract Usage Reporting Requirements

For Oklahoma-based Buyers, Contractor agrees to submit a Contract Usage Report to the State of Oklahoma on a quarterly basis. "Reports shall provide the total amount sold to all political entities that include but are not limited to Oklahoma State Agencies, Counties, Cities, Schools, and Municipalities. Reports shall be submitted quarterly regardless of quantity.

Usage reports shall be sent electronically to Strategic.Sourcing@omes.ok.gov within 45 calendar days upon completion of performance quarter cited below:

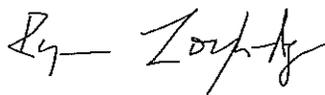
- a. January 01 through March 31
- b. April 01 through June 30
- c. July 01 through September 30
- d. October 01 through December 31

21. Contract Management Fee

Pursuant to 74 O.S. § 85.33, The Central Purchasing Division of the State of Oklahoma imposes and Contractor agrees to pay a contract management fee in the sum of one (1)% of the combined total quarterly expenditures from Oklahoma under this Participating Addendum. This contract management fee is to be noted on the quarterly "Contract Usage Report" and paid by the Contractor, to Central Purchasing within 45 calendar days from the completion of the quarterly reporting period. The contract management fee check should be sent to:

Office of Management and Enterprise Services
Attention Accounts Receivable
5005 N. Lincoln Boulevard, Suite 300
Oklahoma City, OK 73105

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Oklahoma	Contractor: W.W. Grainger Inc.
Signature: 	Signature: 
Name: Ferris J Berger	Name: Ryan Loughridge
Title: State Purchasing Director	Title: Government Sales Manager
Date:	Date: 09/19/2018

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator: Shannon Berry
Telephone: 775-720-3404
Email: sberry@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.]