

**PARTICIPATING ADDENDUM
NASPO VALUEPOINT**

**FACILITIES MAINTENANCE AND REPAIR & OPERATIONS (MRO)
AND INDUSTRIAL SUPPLIES**

**Administered by the State of Oregon
Contract #8496**

W.W. GRAINGER, INC.

And

The State of New Jersey

This Participating Addendum, together with its exhibits ("Participating Addendum"), is made as of the 17 day of September, 2018, by and between W.W. Grainger, Inc. ("Grainger"), whose principal address is 100 Grainger Parkway, Lake Forest, IL 60045, and the State of New Jersey, Department of Treasury, Division of Purchase and Property ("Division") whose address is 33 West State Street, 8th Floor, P.O. Box 230, Trenton, New Jersey 08625, on behalf of the State of New Jersey and its Cooperative Purchasing participants as hereinafter defined, collectively referred to as the "State".

WHEREAS, pursuant to N.J.S.A. 52:34-6.2 the Director, Division of Purchase and Property ("Director") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services"; and

WHEREAS, on November 15, 2017, the State of Oregon issued Solicitation DASPS-2183-17, an advertised, competitive solicitation for facilities maintenance, repair, operations and industrial supplies on behalf of itself and other government agencies; and

WHEREAS, Grainger is a vendor awarded a contract by the State of Oregon, after a competitive bid process, under the State of Oregon DASPS-2183-17 on behalf of the State of Oregon, and the NASPO ValuePoint ("NASPO") for facilities maintenance, repair, operations and industrial supplies; and

WHEREAS, the State of Oregon permits other states to participate in its Contract 8496, Facilities Maintenance, Repair & Operations (MRO) and Industrial Supplies (together with its exhibits, the "Master Agreement"); and

WHEREAS, the State wishes to participate in the Master Agreement and Grainger has agreed to the State's Standard Terms and Conditions (Rev. 07/18/18), a copy of which is attached hereto as Exhibit A and which is incorporated herein by reference; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Grainger to provide facilities maintenance, repair, operations and industrial supplies to the State under the Master Agreement is the most cost effective method of procuring such goods and services, and that it is in the best interest of the State to enter into a Participating Addendum with Grainger to provide such goods and services under the Master Agreement; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, the parties to this Participating Addendum hereby agree as follows:

1. **Term:**

This Participating Addendum shall be effective from the date it is fully executed through June 30, 2019, unless earlier terminated. The State reserves the right, in its sole discretion, to extend this Participating Addendum pursuant to any extension of the Master Agreement, under the same terms and conditions as the Master Agreement and this Participating Addendum.

2. **Scope:**

All governmental entities within the State of New Jersey, including all state agencies and local public bodies, counties, cities, municipalities, public schools and institutions of higher education ("Cooperative Purchasing participants"), are authorized to purchase products under the terms and conditions of this Participating Addendum. The contract will be valid from the date executed by both parties, through the current term of June 30, 2019. Grainger shall provide to the State and its Cooperative Purchasing participants the products set forth in the Master Agreement at the pricing, terms and conditions therein set forth and the terms and conditions specifically set forth in this Participating Addendum.

3. **The State's Standard Terms and Conditions:**

Grainger has read and agreed to the State's Standard Terms and Conditions (Rev. 07/18/18) (the "State's Standard Terms and Conditions"), which are incorporated herein by reference and are attached hereto as Exhibit A. Any references to this Participating Addendum herein shall be deemed to include the State's Standard Terms and Conditions.

4. **Modifications to Master Agreement Allowed or Required by Applicable Law:**

a. Subsection (b) (2) of Section 33, "Indemnification - Intellectual Property" of the Master Agreement is hereby modified by adding the following:

Notwithstanding anything to the contrary in this subsection, that the State must approve any settlement of the Intellectual Property Claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the Intellectual Property Claim and confer with the Contractor at its expense. Furthermore, neither the Contractor nor any attorney engaged by the Contractor shall defend the claim in the name of the State of New Jersey or any Agency of the State, nor purport to act as legal representative of the State of New Jersey or any Agency of the State, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of the Division. The State of New Jersey may, at its election and expense, assume its own defense and settlement.

b. Section 3.15, "Sourced Products, if applicable", of Exhibit B is hereby modified to include the following:

3.15.3: Purchase Orders for Sourced Products may not be placed by State Using Agencies without prior, written approval by the Division. A State Using Agency must present such written Division proof to Grainger at time of order.

c. Subsection (d) of the State of New Jersey Standard Terms and Conditions Section 5.12, "Delivery Requirements" is hereby modified as follows:

In the event delivery of goods and services is not made within the number of days stipulated or under the schedule defined in the contract, the contractor shall be given a delinquency notice with a 30 day period to cure such delinquency, after which the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5. **Primary Agreement Contact:**

The primary participating entity contact for this Participating Addendum is as follows:

Name: Christine Murphy
Title: Procurement Specialist I
Participating Entity Name: New Jersey Division of Purchase and Property, Department of the Treasury
Address: 33 W. State Street, P.O. Box 230, Trenton, NJ 08625-0230
Telephone: (609) 984-7337
Fax: (609) 292-1114
E-mail: christine.murphy@treas.nj.gov

The primary Contractor contact for this Participating Addendum is as follows:

Name: Dennis Flynn
Title: Government Sales Manager
Contractor: W.W. Grainger Inc.
Address: 1001 Hadley Road, South Plainfield, NJ 07080
Telephone: 908-355-1099
Fax: 908-497-0163
E-mail: dennis.flynn@grainger.com

6. **Rebate:** Acceptance? Yes No

Grainger agrees to offer a one (1) % rebate as described below or another comparable arrangement to the State in accordance with this Participating Addendum. The rebate will not be added to the pricing for items ordered under the contract. Grainger will negotiate in good faith to include these costs in subsequent discount and pricing levels during future contract negotiations.

- Rebate will be paid within 45 days after a calendar quarter based on total gross sales, less freight, taxes, returned products, and credits ("Net Sales").
- Grainger will provide backup documentation to the Participating State to substantiate the rebate amount.
- Rebate will be made payable to the "Treasurer, State of New Jersey."

7. **Reports:**

Expenditure reports:

- Grainger will submit quarterly expenditure reports covering all purchases made under this Participating Addendum in a format mutually agreed to by the parties.

The reports should be submitted to the following address:

Christine Murphy
Procurement Specialist I
Department of the Treasury
Division of Purchase & Property
33 West State Street, P.O. Box 230
Trenton, New Jersey 08625-0230
Christine.murphy@treas.nj.gov

8. **Compensation and Ordering:**

- a. Pricing shall be as set forth in the Master Agreement.
- b. The State shall make all payments to Grainger under the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.
- c. All orders and payment will be issued directly to Grainger.
- d. Grainger shall submit invoices upon delivery of products and services, or on a monthly basis according to its practices.

9. **Additional Information:**

- a. This Participating Addendum including, without limitation, the State's Standard Terms and Conditions, and the Master Agreement, set forth the entire agreement between the parties and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, shall not be added to or incorporated into this Participating Addendum or the Master Agreement by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement shall prevail and govern in the case of any such inconsistent or additional terms. In the event of any conflict between the terms of this Participating Addendum and the Master Agreement, the terms of the Participating Addendum shall prevail.
- b. No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.
- c. This Participating Addendum may not be amended or modified except by written agreement executed by authorized representatives of each party.
- d. The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.
- e. The documents below shall govern the liability of Grainger and the State for the services and products being provided by Grainger in the following order of precedence:
 - i. This Participating Addendum, including the New Jersey's Standard Terms; and Conditions; and
 - ii. The Master Agreement.

10. **Confidentiality:**

- a. The State's obligation to maintain the confidentiality of the contractor's confidential information provided to the State under this Participating Addendum is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of this Participating Addendum, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Contract. The contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the contractor acknowledges the terms and pricing of this Participating Addendum are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- c. The State's Confidential Information shall consist of all information or data in any form whatsoever supplied by the State, any information or data gathered by the contractor in fulfillment of this Participating Addendum and any analysis thereof (whether in fulfillment of this Participating Addendum or not).
- d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under this Participating Addendum to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- e. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care in doing so that it uses to protect its own confidential information.

- f. In the event that the State receives a request for Contractor Confidential Information related to this Participating Addendum pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide the contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. The contractor shall take any action it deems appropriate to protect its documents and/or information.
- g. In addition, in the event the contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, the contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and the contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the contractor of its obligation to take action to protect such information if the contractor is aware of a legal reason to do so.
- h. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and the contractor does not exercise its rights as described in subsection (f), or if the contractor is unsuccessful in defending its rights as described in subsection (f), or (iv) in the case of the contractor, if the contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (g), or if the State is unsuccessful in defending its rights as described in subsection (g).

11. References to External Documentation:

Any external documentation incorporated by reference into the Master Agreement pursuant to Section 1(a)(4) or (5) thereof shall be subject to the terms and conditions of this Participating Addendum. In the event of any conflict between the terms of a document incorporated by reference into the Master Agreement, and these terms and conditions, these terms and conditions shall prevail.

12. Miscellaneous:

- a. Any claims against the State under this Participating Addendum are subject to the Tort Claims Act (N.J.S.A. 59:1-1 et seq.) and the Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). Any action brought under this Participating Addendum shall be filed in Mercer County in the appropriate Division of the State of New Jersey Superior Court.
- b. All publicity and/or public announcements pertaining to this Participating Addendum shall be approved by the State prior to release.
- c. The following are New Jersey procurement requirements that Grainger agrees to fulfill prior to the contract award:
 - i. New Jersey Business Registration (N.J.S.A. 52:32-44);
 - ii. Ownership Disclosure (N.J.S.A. 52:25-24.2);
 - iii. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
 - iv. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et seq.);
 - v. Disclosure of Investigations and Actions Involving Bidder;
 - vi. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et seq.)
 - 1. New Jersey Form AA-302 Affirmative Action Employee Information Report; or New Jersey Affirmative Action Certificate; or Federal Affirmative Action Approval Letter.
 - vii. Cooperative Purchasing Form;
 - ix. Executed Certification of Non-Involvement in Prohibited Activities in Iran (N.J.S.A. 52:32-58)

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

Government Entity:

State of New Jersey

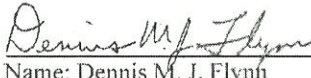
Department of Treasury

Division of Purchase and Property

Contractor:

W.W. Grainger, Inc.


Name: Maurice Griffin
Title: Acting Director
Date: 9/24/18



Name: Dennis M. J. Flynn
Title: Government Sales Manager
Date: 9/17/2018

APPROVED AS TO FORM:

Gurbir S. Grewal

Attorney General of the State of New Jersey

By:


Name: Diana Reynolds
Title: Deputy Attorney General
Date: 9/19/18