

**PARTICIPATING ADDENDUM**  
**for**  
**Maintenance, Repair, and Operations Supplies and Equipment under Omnia Partners**  
**Cooperative Program**

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Participating Entity:  
**CONTRA COSTA COUNTY**

Contractor: Kimball Midwest (Contract #R192004)

This Participating Addendum (“Agreement”) is made and entered into as of May, 14, 2024 (“Effective Date”), by and between Contra Costa County, a political subdivision of the State of California, (“County”) and Midwest Motor Supply Co., an Ohio corporation, doing business under the trade name Kimball Midwest (“Contractor”). The County and the Contractor are sometimes referred to herein together as the “Parties,” and each as a “Party.”

Whereas, the Contractor offers maintenance, repair, and operations supplies and equipment under a master contract, Contract No. R192004 (“Master Contract”), awarded by Region 4 Education Service Center, a Texas public agency, after a competitive bid process, and made available to public agencies nationally.

Whereas, the County has determined that entering into a Participating Addendum to participate in the Master Contract under the OMNIA Partners cooperative purchasing program will provide a benefit to the County, but that certain terms and conditions of the Master Contract must be modified to meet legal requirements that apply to the County as a California public agency.

Now, therefore, the County and the Contractor agree as follows:

1. Term. The term of this Agreement begins on the Effective Date, and it expires on March 31, 2025, unless it is sooner terminated. If the Master Contract is terminated prior to the expiration of the term of this Agreement, the Contractor shall continue to perform under this Agreement through the term of this Agreement.
2. Payment Limit. The County’s total payments to the Contractor under this Agreement shall not exceed \$500,000 (“Payment Limit”). Notwithstanding anything to the contrary herein or in the Master Contract, nothing in this Agreement obligates the County to make any purchases, or any particular volume of purchases, under this Agreement.
3. No Public Work/No Public Project. The Contractor shall not perform any work under this Agreement that would qualify as a public work under the California Public Contract Code, or that would require the payment of prevailing wages under the California Labor Code. The Contractor shall be solely responsible for complying with all applicable prevailing wage laws, wage and hour laws, and other laws that apply to Contractor’s performance under this Agreement.
4. Changes to Master Contract. For the purposes of this Agreement, the terms of the Master Contract are incorporated in, and made a part of, this Agreement, except for those terms of the Master Contract that are modified by this Agreement, as follows:
  - a. Parties. Each reference to “Region 4 ESC” in the Master Contract is replaced with “Contra Costa County.”
  - b. Registration with the Secretary of State. Section 12 (Licenses) of the Master Contract is amended by adding the following sentence:

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“Prior to the County’s first purchase, the Contractor shall provide the County’s Purchasing Agent written confirmation that Contractor has registered with the California Secretary of State and has designated an agent for service of process located in California.”

- c. Audit Rights. The third sentence in Section 18 (Audit Rights) of the Master Contract is deleted and replaced with the following:

“The audit right shall survive for three years following termination or expiration of the Master Contract.”

- d. Indemnity. Section 30 (Indemnity) of the Master Contract is deleted in its entirety and replaced with new Section 30, to read:

“30. Indemnity. The Contractor shall indemnify, defend, and hold harmless Contra Costa County, its officers, employees, agents, and representatives (collectively, “County Parties”) from and against all claims, demands, damages, losses, expenses, judgments, costs, penalties fees, including attorney’s fees and attorney’s fee awards, (collectively, “Liabilities”) arising out of or resulting from the negligence or willful misconduct of the Contractor, or any of the Contractor’s officers, employees, agents, or representatives, while performing services under this Contract. Nothing herein requires the Contractor to indemnify any County Parties from the proportion of any Liabilities that arises from the negligence or willful misconduct of the County. This section shall survive the termination or expiration of this Agreement and the Master Contract.”

- e. Legal Obligations. Section 33 (Legal Obligations) of the Master Contract is amended by adding the following sentences:

“Notwithstanding anything to the contrary in the Master Contract, this Agreement and all records produced or exchanged between the County and the Contractor under this Agreement will be considered disclosable public records under the California Public Records Act, Contra Costa County’s Better Government Ordinance, and other applicable laws, unless Contra Costa County, in its sole discretion, determines that any record is exempt from disclosure. All references in the Master Contract to the Contractor’s obligations to comply with all state laws shall include the laws of the State of California.”

5. Governing Law. Notwithstanding anything to the contrary in the Master Contract, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws principles. Any litigation to enforce or interpret this Agreement shall be filed and prosecuted in a state or federal court in California where venue is proper and that has jurisdiction over the parties and the subject matter of the litigation. During the term of this Agreement, the Contractor shall remain registered in good standing with the California Secretary of State and maintain an agent for service of process in California.

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6. No Joint Venture. At all times during the term of this Agreement, neither party will function as or represent itself to be the other party or its agent, and no officer, employee or agent of one party shall hold himself or herself out to be an officer, employee or agent of the other party. This Agreement does not create any rights or obligations between the parties other than those expressly set forth herein. Nothing in this Agreement shall be construed as conferring any rights upon any third parties or any person other than the County and the Contractor.
7. Amendment. This Agreement may be amended or modified at any time by mutual written agreement of the parties.
8. Termination. Notwithstanding anything to the contrary in the Master Contract, either party may terminate this Agreement at any time upon sixty (60) days written notice to the other party at the other party's address specified in paragraph 10 (Notices).
9. Performance. The Contractor affirms that there are no encumbrances or obstacles that will prohibit its performance pursuant to the terms of this Agreement. The Contractor shall be solely responsible for guaranteeing any of its dealers, distributors, or subcontractors perform in accordance with the requirements of the Master Contract, as modified by this Agreement. If the County issues any purchase orders to acquire goods or services under this Agreement, to the extent that there is any conflict between the terms of the purchase order and a term in this Agreement, which incorporates the terms of the Master Contract subject to the changes specified herein, the term of this Agreement shall govern and prevail over the conflicting term in the purchase order.
10. Notices. Notices to the parties shall be provided to:

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Contractor

Kimball Midwest  
Attn: Senior Director, Strategic Sales, Tyler Wooddell  
4800 Roberts Road  
Columbus, OH 43228  
Telephone: (800) 233-1294 ext 2478  
Email: tyler.wooddell@kimballmidwest.com

CCCFPD

Contra Costa County – Purchasing Services  
40 Muir Road, 2<sup>nd</sup> Floor  
Martinez, CA 94553  
Telephone: (925) 957-2495  
Contact: Cynthia Shehorn, Procurement Services Manager  
Email: cindy.shehorn@pw.cccounty.us

All notices shall be in writing and personally delivered, delivered by overnight carrier with delivery charges for next day delivery prepaid by the sending party, or sent by First Class certified (return receipt required) U.S. Mail, with postage prepared by the sending party. A courtesy copy of a notice may be given by email, but giving a courtesy copy of a notice by email does not relieve the sending party of its obligation to give notice to the receiving party in the manner required by this section. A notice given in accordance with this section shall be deemed received by the receiving party on (a) the same day, if personally delivered, (b) the next business day if timely deposited with an overnight carrier and with delivery charges prepaid to ensure next day delivery, and (c) on the fifth day after mailing if mailed by First Class certified (return receipt required) U.S. Mail with postage prepaid. Either party's designated representative may change the party's address listed above by providing written notice to the other party in accordance with this section.

11. Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Notwithstanding anything to the contrary in the Master Contract, this Agreement may not be assigned by either party without the express written permission of the other party, which shall be within that party's sole discretion to provide.

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IN WITNESS, WHEREOF, the parties have executed this Participating Addendum as of the Effective Date first written above.

Participating Entity: <b>Contra Costa County</b>	Contractor: <b>Midwest Motor Supply Co., an Ohio corporation, doing business under the trade name Kimball Midwest</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
	Signature:
	Name:
	Title:

Approved as to form:

Thomas L. Geiger, County Counsel

By: \_\_\_\_\_  
Stephen M. Siptroth  
Assistant County Counsel

Attachments:

Exhibit A – Master Contract