

## AGREEMENT FOR SUPPLIES AND SERVICES

THIS AGREEMENT is made and entered into this 2 day of November, 2021, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and Wilbur-Ellis Company, LLC., a California Limited Liability Company, whose address of record is 345 California Street, 27th Floor, San Francisco, California 94104 (hereinafter referred to as "Vendor").

WHEREAS, City requires the supply and delivery of pesticides, herbicides, fertilizers, soil amendments and related materials; and,

WHEREAS, Vendor represents that it possesses the skills and ability to safely provide the supply and delivery of pesticides, herbicides, fertilizers, soil amendments and related materials at the request of the City.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Vendor shall furnish the following supplies and services: Vendor shall supply and deliver the products and materials typically sold by Vendor, including, but not limited to, pesticides, herbicides, fertilizers, soil amendments and related materials.

No additional services shall be performed by Vendor unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Public Works or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Vendor.

2. **TIME OF PERFORMANCE, DELIVERY SCHEDULE.** Vendor shall complete all deliveries within three (3) working days after receipt of an order from City. Conditions may arise which require emergency deliveries (including holidays and weekends) within 24 hours after an order by City. City will indicate on any order if the order is an emergency order requiring expedited delivery.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on June 30, 2022.

4. **COMPENSATION.** Payment by the City to the Vendor for actual services and supplies delivered to City pursuant to this Agreement shall be made upon presentation of an invoice detailing the supplies and services delivered under the Scope of Services, in accordance with the quoted unit/item price. The Vendor agrees to provide all supplies and services required under the Scope of Services in an amount not to exceed Sixty Thousand Dollars (\$60,000.00).

5. **METHOD OF PAYMENT.** Compensation to Vendor shall be paid by the City after submission by Vendor of an invoice delineating the services performed and quantities of all products, materials and supplies delivered.

6. **TRAINING AND SAFETY REQUIREMENTS.** Vendor shall properly and legally maintain all vehicles and equipment used in connection with the performance of this Agreement. Vendor shall train all delivery drivers and personnel to safely handle and deliver all materials, products and supplies being provided to City under this Agreement.

7. **VENDOR'S BOOKS AND RECORDS.** Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Vendor to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Vendor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Vendor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Vendor desire any insurance protection, the Vendor is to acquire same at its expense.

In the event Vendor or any employee, agent, or subcontractor of Vendor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Vendor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Vendor or its employees, agents, or subcontractors, as well as for the payment of any

penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Vendor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Vendor or Vendor's officers, employees, volunteers, and agents during performance of this Agreement; Vendor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Vendor or its employees, subcontractors, or agents, or by the quality or character of Vendor's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Vendor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Vendor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Vendor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Vendor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

(i) Vendor shall obtain and keep in full force and effect general

liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.

- (ii) Vendor shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Vendor.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Vendor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Vendor shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Vendor shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Vendor.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Vendor and its sub-contractors, and that any other insurance or self insurance

maintained by City or other named insureds shall be excess and non-contributory.

d. **Qualifications of Insurer.** The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

e. **Certificate of Insurance.** Vendor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

f. Notwithstanding any language in this Agreement to the contrary, Vendor shall not be entitled to payment pursuant to the terms of this Agreement until Vendor has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Vendor's insurance policies are not current.

## 11. PREVAILING WAGES.

A. **Labor Code Compliance.** If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Vendor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Vendor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Vendor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Vendor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Vendor under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Vendor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Vendor. If the Agreement is so terminated, the Vendor shall be paid for those supplies and services previously delivered to the City at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Vendor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Vendor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Vendor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Vendor so employ such unauthorized aliens for the

performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Vendor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. **WAIVER.** In the event that either City or Vendor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

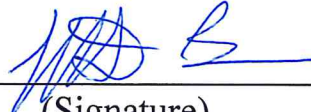
BY: Kimberly Chen 10/15/21  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

*{Signatures continued on next page}*

VENDOR  
WILBUR-ELLIS COMPANY, LLC.,  
A California Limited Liability Company

BY:   
(Signature)

Jeffrey D. Beeson  
(Typed Name)

Its: Salesman  
(Title)

BY:   
(Signature)

DAVID M. GENZOLI  
(Typed Name)

Its: Sales Mgr.  
(Title)

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 345 California Street,  
27th Floor  
San Francisco, CA 94104

TELEPHONE: (415) 771-4000

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_