

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Herschy Environmental, Inc., a California Corporation, whose address of record is P.O. Box 229, Bass Lake, California 93604 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to monitor the Airport Hazardous Waste Site; and

WHEREAS, Consultant represents that it possesses the professional skills to provide environmental monitoring services in connection with said project.

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

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the environmental monitoring services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant 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 Environmental Project Manager or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance

with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Twenty-Five Thousand Five Hundred Nine Dollars (\$25,509.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant 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 Consultant 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 Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant 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, Consultant 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 Consultant 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. Consultant 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 Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from 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 Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant'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 Consultant 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 Consultant 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, Consultant 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, Consultant 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) Consultant 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) Consultant 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 Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant 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) Consultant 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) Consultant 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 Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant 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. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. 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).

f. Certificate of Insurance. Consultant 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.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant 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 Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant 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 Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

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

Consultant 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 Consultant 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, Consultant 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.

14. **WAIVER.** In the event that either City or Consultant 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.

15. **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.

16. **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.

17. **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.

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

19. **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.

20. **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.

21. **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:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Ken Rogers 5/18/16
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
HERSCHY ENVIRONMENTAL, INC.,
A California Corporation

BY: Scott Jackson
(Signature)

Scott Jackson
(Typed Name)

Its: Project Manager
(Title)

BY: Cynthia Schymiczek
(Signature)

Cynthia Schymiczek
(Typed Name)

Its: PRESIDENT / OWNER
(Title)

Taxpayer I.D. No. 41-2103509

ADDRESS: P.O. Box 229
Bass Lake, CA 93604

TELEPHONE: (559) 412-4718

FAX: (559) 412-4838

E-MAIL: scottjhersch@sti.net



erSchy Environmental, Inc.

PO Box 229 ♦ Bass Lake, CA 93604-0229 ♦ Phone: 559-641-7320 ♦ Fax: 559-641-7340

May 6, 2016

City of Merced
Mr. Joseph D. Angulo, P.G.
Environmental Project Manager
678 West 18th Street
Merced, California, 95340

RE: **Scope of Work**
Environmental Investigation
Merced Regional Airport Hazardous Waste Site

Mr. Angulo:

HerSchy Environmental, Inc. (HerSchy) is pleased to indicate our interest in the environmental investigation at the Merced Regional Airport hazardous waste site. The bid request was made by the City of Merced (City) in a letter dated March 17, 2016 and is based on the required investigative work described in the June 9, 2011 final Monitoring and Reporting Program No. R5-2011-0808 (MRP) from the California Regional Water Quality Control Board (RWQCB).

Semi-annual groundwater monitoring events will be conducted during the third quarter of 2016 through the first quarter of 2019. The final reporting deadlines are November 1 for third quarter work, and May 1 for first quarter work. Groundwater sampling will be scheduled with sufficient time to have analytical results returned to us and a draft copy sent to the City for approval prior to submitting the final. Each report will contain historic data as outlined in the MRP and the current event's data in graphical form, with the third quarter event being an annual report additionally reporting the year's data in graphical form and presenting a plume analysis and any recommendations.

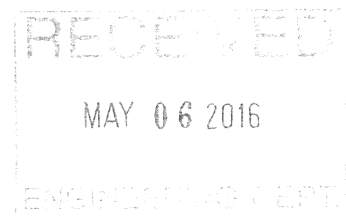
HerSchy presently employs one full-time technician, a part-time technician, and one geologist who periodically performs field work as needed, including ground water sampling. There are sufficient hours available to conduct all phases of the work, from sampling to reporting, as demonstrated for this site in the execution of the current contract.

Please contact Scott Jackson at (559) 412-4718 with any questions.

Best regards,
HerSchy Environmental, Inc.


Scott Jackson
Senior Project Geologist

EXHIBIT A





CITY OF MERCED RFP
HERSCHY ENVIRONMENTAL, INC.
Equipment and Methodologies

The following equipment and methods will be used in the collection and analysis of groundwater samples:

- 12-volt submersible pump or stainless steel bailer for purging, depending on depth to well. A minimum of three well volumes will be purged prior to sampling, with the EC, pH, and temperature readings collected at each purge volume and stable prior to sample collection in accordance with the Merced County Division of Environmental Health *"Minimum Monitoring Well Sampling Requirements, September 2002"*. The stainless steel bailer and submersible pump, if used, will be decontaminated with non-phosphorous detergent and a rinse prior to use at each well.
- Hannah EC, pH, and temperature meter.
- YSI oxygen-reduction potential and dissolved oxygen meter.
- Solinst sounder.
- New disposable bailers to collect samples, with the sampler wearing new disposal nitrile gloves at each sampling point.
- Purge and decontamination water will be discharged onto the ground as per the RWQCB.
- Samples will be prepared by the laboratory using EPA Method 5030, with EPA Method 8015B used for Total Petroleum Hydrocarbons – gasoline range (TPH-g) and a full scan EPA Method 8260b will be used for the analysis for volatile organic compounds (VOCs). Total petroleum hydrocarbons – diesel range (TPH-d) will be prepared using the LUFT method and analyzed using EPA Method 8015B.
- Reporting will be as directed in the MRP, and will adhere to the RWQCB Appendix A to the Tri-Regional Board Staff Recommendations for Preliminary Investigation and Evaluation of Underground Tank Sites.



CITY OF MERCED RFP
HERSCHY ENVIRONMENTAL, INC.
Proposed Budget

The method of compensation shall be in accordance with the *Methods of Compensation* section of the City's RFP. For the period of fiscal years 2016/2017 through 2018/2019, HerSchy shall charge an amount not to exceed **\$25,509**. However, the environmental work herein is funded on a fiscal year basis, wherein up to, but not to exceed, **\$8,503**, shall be charged in a given fiscal year, invoiced semi-annually on a progress payment basis no sooner than 30 days after the given event's report has been uploaded to GeoTracker.

This proposed budget includes the following tasks and equipment:

- All labor associated with the travel, purging and sampling of wells specified in the RFP.
- All charges related purging and sampling of wells, including water quality meters, sounders, bailers, and purge equipment.
- All labor associated with the preparing and submission of the semi-annual draft and final reports to the City, RWQCB, and GeoTracker.
- Costs associated with the transport and/or shipping of samples to a laboratory, and the analyses thereof.

The following labor rates apply work within this contract:

Project Geologist – project management and reporting	\$85 per hour
Technician – groundwater sampling	\$60 per hour
Clerical – report publication and GeoTracker upload	\$50 per hour

Additionally, should any scheduled well not be sampled for any reason, a discount of **\$160** per well not sampled shall be applied to the charges.



CITY OF MERCED RFP
HERSCHY ENVIRONMENTAL, INC.
Acknowledgement of Compensation

HerSchy Environmental, Inc. acknowledges that:

- This contract will be funded by fiscal year, beginning July 1, 2016, and that the total “not to exceed” amount for the contract will be divided into three equal parts with each part funding a fiscal year. Unspent funds will not carry over between fiscal years.
- Many of the wells have been dry over the past two years, but remain on the schedule of sampling. This proposal includes the sampling and sample analysis for all scheduled wells, but a discount will be applied for each scheduled well not sampled for any reason, including insufficient water.