AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, 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 Alberto Gonzales, a sole proprietor, doing business as AJG Garden Service, whose address of record is 1247 Brookdale Drive, Merced, California 95340, (hereinafter referred to as "Contractor").

WHEREAS, City desires to engage Contractor to render landscape maintenance services; and,

WHEREAS, Contractor represents that it possesses the required skills and any necessary licenses to provide landscape maintenance services required by the City pursuant to the terms and conditions set forth in this Agreement.

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

1. SCOPE OF SERVICES. The Contractor shall furnish the following services: Contractor shall provide the landscape maintenance services, including all labor, materials, tools, equipment, services and any incidental or customary work necessary to provide landscape maintenance services as more particularly described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor 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 his or her designee. However, the means, methods and details by which the work is accomplished shall be the sole responsibility of the Contractor.

2. TERM. The term of this Agreement shall be for two (2) years from July 1, 2019, to June 30, 2021, unless earlier terminated as provided herein. Contractor shall complete all of the work outlined in the Scope of Services within the term of this Agreement and shall meet any other established schedules and deadlines. Upon expiration of this Agreement, and upon approval by City, Contractor shall have the option to renew this Agreement for an additional maximum period of three (3) years ending as of June 30, 2024.

3. COMPENSATION. Payments by the City to the Contractor shall be made monthly and in proportion to the services satisfactorily performed within each phase. For Contractor's services rendered under this Agreement, City shall pay Contractor the not to exceed sum of Twenty-Three Thousand Four Hundred Dollars ($23,400.00) per month for a total not to exceed sum of Two Hundred Eighty Thousand Eight Hundred Dollars ($280,800.00) annually in accordance with schedule set forth in Exhibit "B."

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

5. 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 Contractor relating to the matters covered by this Agreement shall be the property of the City, and Contractor 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.

6. CONTRACTOR'S BOOKS AND RECORDS. Contractor 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 Contractor 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.

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

In the event Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf Contractor 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.

8. INDEMNITY. Contractor shall indemnify, protect, defend, 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 Contractor or Contractor'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 Contractor or its employees, subcontractors, or agents, or by the quality or character of Contractor's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused solely by the gross negligence of the City. It is understood that the duty of Contractor 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 Contractor 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, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

9. INSURANCE. During the term of this Agreement, Contractor 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) Contractor 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) Contractor 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 Contractor.

(iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor 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) Contractor 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) Contractor 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 respect to automobiles owned, leased, hired or borrowed by the Contractor.

(iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor 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. Contractor shall carry professional liability insurance appropriate to Contractor's profession in the minimum amount of One Million Dollars ($1,000,000).

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. Contractor 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. In addition to any other remedies City may have, City reserves the right to withhold payment if Contractor's insurance policies are not current.

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

11. CONTRACTOR'S LICENSE. At all times during the term of this Agreement and any extension thereof, Contractor shall keep and possess a valid

State Contractor's License type C-27 Landscaping Contractor as specified for this Agreement in City's Request for Proposals.

12. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor 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. Contractor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

14. WAIVER. In the event that either City or Contractor 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.

15. 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.

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: _____ 4-30-19
City Attorney Date

ACCOUNT DATA:

BY:_____
Verified by Finance Officer

{Signatures continued on next page.}

CONTRACTOR:
ALBERTO GONZALES,
A Sole Proprietor,
Doing Business as
AJG GARDEN SERVICE

BY: _____
Alberto Gonzales

Taxpayer I.D. No. 82-2458089

ADDRESS: 1247 Brookdale Drive
Merced, CA 95340

TELEPHONE: (209) 628-8207
FAX: _____
E-MAIL: ajggardensvc@gmail.com

EXHIBIT A

SCOPE OF SERVICES

I. IRRIGATION - GENERAL

Irrigation shall be accomplished by the use of automatic or manual sprinkler systems where available and operable. Failure of an existing system to provide full and adequate coverage shall not relieve the contractor of the responsibility to provide proper coverage of all areas. Providing any supplementary hoses, sprinklers, nozzles, etc., necessary to accomplish full coverage shall be the contractor's responsibility.

A. Maintenance

The contractor shall maintain all sprinkler systems in such a way as to give proper coverage and full working capacity, making necessary adjustments to prevent excessive water run-off into streets or other areas not intended to be irrigated. Care shall be taken to prevent wasting water, causing soil erosion, or allowing seepage into existing underground improvements or structures.

The contractor shall, at no cost to the City, keep controller or valve boxes free of dirt and debris; repair, replace, clean, adjust, straighten, raise or lower the following sprinkler system components as it relates to maintenance of the landscape areas:

1. Sprinkler heads;
2. Sprinkler caps;
3. Sprinkler head risers;
4. Valve covers;
5. Valve boxes;
6. Valve box lids, including electrical pull boxes and lids;
7. Valve sleeves;
8. Quick coupler valves and caps;
9. Hose bibs.

B. Inspection

The contractor shall, at least once a week, inspect all areas covered by an automatic irrigation system for any malfunction. Approximately thirty (30) days prior to the termination of the contract, a comprehensive test of all irrigation systems shall be made by a Public Works Department representative. Any repairs deemed the contractor's responsibility shall be made by the contractor prior to the end of the contract period.

If repairs made are not to the satisfaction of the Director of Public Works or his designee, deductions shall be made in the final contract payment to cover the cost of eliminating the discrepancies determined by the Director of Public Works or his designee.

C. Repairs

Irrigation systems which are damaged or altered in any way as a result of work performed under this contract shall be repaired or replaced in kind and in an approved manner by the contractor.

Repairs shall be made immediately after damage or alteration occurs, unless otherwise directed. Repairs made as a result of theft, vandalism or an act of God shall be performed by the City.

Winterization – Contractor shall winterize all exposed piping and back flow prevention devices to prevent freeze damage. All damage to back flow devices caused by freezing will be the contractor responsibility to repair or replace.

Repairs not made, or not made to the satisfaction of the Director of Public Works or his designee, will be done by others and billed to the contractor.

D. Irrigation to be accomplished as follows:

Turf and Groundcover - Turf and groundcover areas to be watered, as required, to maintain horticulturally acceptable growth and color, as well as promote deep root growth. Daily shallow water applications should be avoided where possible in favor of deeper water applications. Water to turf and groundcover areas to generally be applied between 3:00 a.m. and 7:00a.m. where possible to lower the risk of fungus in cool season turf.

Banks and Slopes - Sloped landscape areas to be irrigated Monday through Friday as required to maintain horticulturally acceptable growth and color. Best irrigation practice is to promote deep root growth with a minimum of run-off.

Shrubs and Trees - Shrubs and trees to be irrigated as needed to maintain horticulturally acceptable growth and color.

Irrigation rates to be adjusted according to shrubs or tree types and seasonal weather conditions. Deep watering for root growth is encouraged, and surface run-off to be kept at a minimum.

Newly Planted Trees, Shrubs, Groundcover, and Turf - All newly planted areas to receive special attention until plants are established. Adequate water to be applied to promote normal, healthy growth. Watering basins around newly planted shrubs and trees to be used during establishment period.

II. WEED CONTROL - GENERAL

For the purposes of this specification, a weed shall be considered to be any undesirable plant or plant growing out of place.

All landscaping within the specified maintenance areas including lawns, shrubs, groundcover beds, planters, and tree wells shall be kept free of all weeds at all times. Complete removal of all weed growth is to be accomplished every thirty (30) days on a continuing basis, not just once each thirty (30) days. Weeds may be controlled by mechanical methods, or chemical methods at the discretion of the contractor. Also, weed abatement shall be completed around the entire property of the Central Police Station, South Police Station, and Police Warehouse.

A. Use of Chemical Pesticides for Weed Control

The contractor shall abide by all rules and regulations of the California Department of Food and Agriculture, Department of Health, and Department of Industrial Relations regarding the safe application of herbicides under this contract. Care shall be taken to ensure the safety of the public and contractor's employees during chemical weed control operations. All posting regulations shall be followed in accordance with current U.S.D.A. regulations in regards to re-entry times.

Great care shall be taken by the contractor to avoid herbicide drift onto non-target plants.

III. DISEASE AND PEST CONTROL

The contractor shall regularly inspect all landscaped areas for the presence of disease, insect, or rodent infestation.

Upon approval of the Director of Public Works or his designee, the contractor shall implement the approved control measures utilizing all safeguards necessary to protect the public and contractor's employees.

A. Use of Chemical Pesticides

All rules of the California State Department of Food and Agriculture, Department of Health, and Department of Industrial Relations regarding safe application of pesticides under this contract shall be observed.

Great care shall be taken to avoid pesticide drift onto non-target organisms.

IV. PRUNING – GENERAL

All shrubs, trees, groundcover, and other vegetation growing in the work areas shall be pruned weekly, or as required to maintain plants in a healthy growing condition. Pruning is to be done in a manner which promotes the plant's natural growth characteristics. Hedging, shearing, or other sever pruning will not be allowed except with prior approval.

Plant growth is to be kept to prevent its encroachment into walks, passageways, curbs, and streets. Clear view of traffic signs and intersections is to be maintained at all times. Plant growth shall not exceed height of block walls.

All dead, dying, or damaged branches shall be removed immediately. All cuts shall be made cleanly with no stubs or projections remaining.

A. Trees

The contractor shall be responsible for all pruning that can be reached with a 12-foot pole-saw by a man standing on the ground. All trees are to be maintained in their natural shape.

Newly planted trees are to be staked, pruned and shaped to promote their eventual development into strong, healthy representatives of their species. Until young trees are strong enough to stand alone, they shall be flex-tied between two approved 2-inch by 2-inch by 8-foot treated tree stakes. Split plastic hose or black tire casing held in place by 12-gauge wire shall be used to secure the young trees. Tree ties to be inspected often for signs of girdling or abrasion.

The contractor shall bring to the Director of Public Works or his designee's attention within 24 hours of any tree which shows signs of root heaving, leaning, having hanger limbs, or in some manner constituting a safety hazard.

V. LITTER REMOVAL

During weekly maintenance cycles all trash, debris, and dead limbs shall be removed from landscaped areas to include curb and gutter.

VI. FERTILIZATION - GENERAL

Contractor will use a complete fertilizer (nitrogen, phosphorus, and potassium) equal to or better than Turf Gold 22-5-5. The contractor will put on fertilizer at the following times and rates:

First application in early spring, second application in early fall. The rate will be one pound of nitrogen per thousand square feet, per application.

The contractor shall notify the Director of Public Works or his designee in advance of fertilization application.

VII. REPLACEMENT OF PLANT MATERIAL

A. The contractor shall notify the Director of Public Works or his designee within four (4) days of the loss of plant material due to any cause.

B. The contractor shall supply all labor and materials to replace any tree, shrub, turf, or groundcover damaged or lost through the contractor's faulty maintenance or negligence.

C. The size and species of replacement plant material shall be determined by the Director of Public Works or his designee.

D. Where there is a difference in value between the tree lost and the replacement tree, the difference will be deducted from the contract payment.

The value will be deducted from the contract payment. The value will be determined using the latest I.S.A. guidelines.

Any plant damaged or lost through theft, vehicular damage, act of God, or other mysterious sources not the responsibility of the contractor, shall be replaced by the City.

VIII. TURF MAINTENANCE

A. Mowing

All Lawn areas in this contract shall be mowed with power-propelled reel or rotary-type mowers. Mowers shall be maintained to provide a smooth, even cut without tearing. Blade adjustment to provide uniform cut with no ridges or depressions.

All mowers are to be cleaned prior to each mowing to avoid possible weed invasion. All litter shall be removed prior to mowing.

Mowing to be performed so that no more than one-third of the grass blade is removed in returning the grass to acceptable height for the species being mowed.

All turf areas are to be mowed once a week on a preset day. Any changes to this schedule are to be approved, in advance, by the Director of Public Works or his designee.

During periods of heavy growth, more than one mowing per week may be required in high maintenance areas.

B. All turf to be edged adjacent to improved surfaces. If no improved surface exists, turf edges shall be maintained where the turf abuts a shrub bed or property line, or to maintain turf delineation.

Edging to be performed at every turf mowing.

Clippings shall not be left in roadways, gutters, or walkways.

IX. GROUNDCOVER MAINTENANCE

A. All areas planted in groundcovers shall be adequately irrigated and fertilized to maintain vigorous growth.

B. Groundcover beds shall be periodically edged to keep them in their intended space and off of street curb. Groundcover shall not be allowed to encroach into lawns, shrub beds, or other areas deemed as undesirable by the Director of Public Works Operations or his designee.

C. Groundcover plantings shall be periodically thinned and pruned for vigorous growth and overall appearance of the site. The spaces between plants shall be regularly cultivated. Groundcover shall not be allowed to encroach into lawns, shrub beds, street curb, or other areas deemed as undesirable by the Director of Public Works or his designee.

D. Groundcover plantings shall be thinned and pruned for vigorous growth and overall appearance of the site. The spaces between plants shall be regularly cultivated.

E. Litter clean up shall be completed by contractor during weekly maintenance intervals.

X. TRAFFIC CONTROL SETUP

The purpose of traffic control devices, as well as principles for their use, is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets, highways, bikeways & sidewalks.

A. Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.

B. The contractor shall follow California Manual on Uniform Traffic Control Devices (CA-MUTCD) 2014 or latest Edition in order to perform required maintenance. Contractor shall ensure all Temporary Traffic Control (TTC) devices follow CA-MUTCD 2014 or latest edition.

C. The contractor shall follow all City of Merced Municipal Code ordinances, Public Works Engineering Division rules and regulations regarding traffic control measures, such as: proper use of traffic cones, lane closures,

EXHIBIT B

ITEMIZED COSTS PROPOSAL SHEET

Maintenance Districts		*Use Whole Numbers Only Monthly:	Annually:
100	Quail Creek	$2,100	$25,200
101	West Creek Homes	$400	$4,800
102	Silverado	$2,400	$28,800
103	Oakmont #3	$1,300	$15,600
104	Northwood Village	$500	$6,000
105	Village Landing	$250	$3,000
108	Sunset West	$750	$9,000
117	Merced Auto Center	$175	$2,100
120	Downtown Maintenance	$750	$9,000
121	Ridgeview Meadows	$425	$5,100
122	Fahrens Park	$1,000	$12,000
126	Mansionette	$400	$4,800
132	Cypress Terrace	$850	$10,200
136	Las Brisas	$1,100	$13,200
139	Paulson Place	$225	$2,700
141	Fahrens Park II	$4,600	$55,200
142	LaBella Vista	$525	$6,300
143	Davenport Ranch	$2,400	$28,800
144	Sequoia Hill	$300	$3,600
145	Sky Moss	$200	$2,400
148	Lowes	$450	$5,400
151	Yosemite Gateway	$2,000	$24,000
153	Vista Del Sol	$300	$3,600
	Subtotal Maintenance Districts:	$23,400	$280,800