

File ID: 2024-01809

12/3/2024

Goods Contracts for Fertilizers, Herbicides, Pesticides, and Rodenticides for Parks and other Open Spaces (Citywide) [Published for 10-day Review on 11/21/2024]

File ID: 2024-01809

Location: Citywide

Recommendation: Pass a **Motion** authorizing the City Manager or the City Manager's designee to execute Contract No. PRC003224 with Heritage Landscape Supply, Inc., dba Normac Landscape Supply (Normac) and Contract No. PRC003225 with Rentokil North America, Inc, dba Target Specialty Products (Target) for \$600,000 each for a total of \$1.2 million for the purchase of fertilizers, herbicides, pesticides, and rodenticides for parks and other open spaces.

Contact: Gary O'Neill, Contract and Compliance Specialist, (916) 808-7432, goneill@cityofsacramento.org; Dayana Reyes Zanaska, Procurement Manager, (916) 808-5524, dreyeszanaska@cityofsacramento.org; Finance Department

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-B25061521001 Bid Evaluation
- 3-B25061521001 Pricing Evaluation
- 4-Contract No. PRC003224 Normac
- 5-Contract No. PRC003225 Target

Description/Analysis

Issue Detail: The departments of Public Works, Utilities, and Youth, Parks, and Community Enrichment (YPCE) use fertilizers, herbicides, pesticides, and rodenticides in parks and open spaces to encourage the growth of desirable plants and limit or eliminate undesirable plants and animal pests. The current contract with Target expires on 12/31/2024. The Procurement division issued Request for Bids No. B25061521001 to solicit new suppliers for these products. The contractors are also required to train City staff on the proper use of the chemicals and to assist with certifications.

Bid No. B25061521001 was posted on the City's electronic bidding portal and available to the public on 8/27/2024. Notifications of the bid were sent to 99 registered vendors. Twenty-one vendors

viewed the bid, and three bids were submitted prior to the 9/25/2025 deadline. One of the bids was deemed non-responsive as it did not meet one of the bid requirements.

Policy Considerations: The recommendations in this report are in accordance with the provisions of City Code Chapter 3.56 Procurement.

The Sacramento City Code Section 4.04.020 and the City Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements, and all agreements greater than \$1,000,000 shall be made available to the public at least ten (10) days prior to City Council action. This item was published for 10-day review on November 21, 2024, in compliance with the City Code.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): No environmental review is necessary because the recommendations in this report involve the purchase of supplies and are not considered to be a project in accordance with Section 15378(b)(2) of the CEQA guidelines.

Applicable Laws and Regulations specifically incorporated into these contracts:

- 1.) The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Environmental Pesticide Control Act (FEPCA) of USEPA.
- 2.) California Code of Regulations (Title 3. Food and Agriculture) Division 6. Pesticides and Pest Control Operations, Chapter 2. Pesticides, Subchapter 1. Pesticide Registration.
- 3.) California Code of Regulations (Title 3. Food and Agriculture) Division 6. Pesticides and Pest Control Operations, Chapter 3. Pest Control Operations, Subchapter 2. Work Requirements, Article 4. Storage, Transportation and Disposal.

Sustainability: The recommendations in this report are in accordance with the provisions of the Sustainable Purchasing Policy.

Commission/Committee Action: None.

Rationale for Recommendation: Normac and Target were the lowest responsive bidders for selected products commonly purchased by City departments. Awarding a contract to two different suppliers allows City departments an alternative if the primary contractor is out of stock of an item.

Financial Considerations: Sufficient funding is available in the fiscal year (FY) 2024/25 Approved Operating Budget for the departments requiring this service. Payments after FY2024/25 are subject

to funding availability in the adopted budget of the applicable fiscal year.

Local Business Enterprise (LBE): Normac is an LBE.

Attachment 2 to Staff Report 2024-01809

Bid No. B25061521001 evaluation - City of Sacramento

ATTACHMENT 1

| Name | Normac Landscape Supply | Rentokil N.A. dba Target | SiteOne Landscape Supply |
|---------------------------|--|--|--|
| Address | 3449 Longview Dr. | 524 Galveston St. | 1385 E 36th St |
| City, State, ZIP | Sacramento, CA 95821 | West Sacramento, CA 95691 | Cleveland, OH 44144 |
| Phone | 916-661-0249 | 800-533-0816 | 216-706-9250 |
| Fax | No | 916-374-0900 | 248-581-1433 |
| email | scott.slater@normac1.com | dave.patterson@target-specialty.com | bids@SiteOne.com |
| City BOT Certificate No. | No | 54470 | 147317 |
| BOT confirmed? | Yes - none | Yes - Active | Yes - Active |
| Type of Business Entity | Corporation | Corporation | Limited Liability Company |
| Signed? | Yes | Yes | Yes |
| Signed by | Scott Slater | Dave Patterson | Monique Potts |
| Title | Territory Manager | Field Representative | Senior Bid Representative |
| eCAPS Supplier ID? | No - inactive ▼ | Yes - 0000002973 | Yes - 0000010453 |
| Normac parent company --- | Heritage Landscape Supply Group, Inc. | | |
| City BOT Certificate No. | 1041995 | | |
| BOT confirmed? | Yes - Active | | |
| eCAPS Supplier ID? | Yes - 0000020051 | | |

ATTACHMENT 2 - Pay

Discount

| | | | |
|------------------|----|----|----|
| Payment Discount | No | No | No |
|------------------|----|----|----|

ATTACHMENT 3 -

Pricing

| | | | |
|--|-----|-----|-----|
| Pricing Schedule received | Yes | Yes | Yes |
| (Evaluation is on a separate document) | | | |

ATTACHMENT 4 - EBO

| | | | |
|---------|-----|-----|-----|
| Signed? | Yes | Yes | Yes |
|---------|-----|-----|-----|

ATTACHMENT 5 - Local preference

| | | | |
|--|-------------------------------------|-----------------------|----------------------|
| 1% bid preference | Yes | Not included with bid | Yes |
| Local Address | 3449 Longview Dr. | N/A | 6500 Elvas Ave. |
| Local Business City, State, ZIP | Sacramento, CA 95821 | N/A | Sacramento, CA 95819 |
| Confirmed? | No, unincorporated County, not City | N/A | Yes |
| <i>LBE? (Info only; not required in the bid)</i> | Yes | No | Yes |

ATTACHMENT 6 - Training

| | | | |
|-----------------------------------|-----|-----|-----|
| Certification Training? | Yes | Yes | No |
| Consultation Services? Compliance | Yes | Yes | Yes |
| Documentation? | Yes | Yes | Yes |

Attachment 3 to Staff Report 2024-01809

B25016521001 Pricing Evaluation - Comparison of bids

| Product Name - as specified | EPA Code | Container size | Unit |
|---|--------------|----------------|--------|
| Capstone MCP | 62719-572 | 2.5 gallon Jug | 2/case |
| Cheetah Pro Herbicide T&O | 228-743 | 2.5 gallon Jug | 2/case |
| Cheetah Pro Herbicide T&O | 228-743 | 2.5 gallon Jug | Jug |
| Clearcast Aquatic Herbicide | 241-437 | Gallon Jug | Gallon |
| Citrine Ultra | 8959-53 | 2.5 gallon Jug | 2/case |
| Esplanade 200SC Agency | 432-1516 | 2.5 gallon Jug | 2/case |
| Fertilizer 15-15-15 TS Pro NPK (Marion) | N/A | 50 lb. bag | Bag |
| Fertilizer 31-03-05 5% TPT 1800 (Marion) | N/A | 50 lb. bag | Bag |
| Glove Green Nitrile 13 in. 15 mil Size 10 | N/A | 12 / box | Box |
| Imicide HP (1000ml) | 7945-25 | Liter bottle | 4/case |
| Milestone Specialty MCP | 62719-519 | 2.5 gallon Jug | 2/case |
| Pendulum AquaCap (BASF) | 241-416 | 2.5 gallon Jug | 2/case |
| Ranger Pro Herbicide | N/A | 30 gallon | Drum |
| Roundup Custom T&O | 524-343 | 2.5 gallon Jug | 2/case |
| Roundup Pro Conc T&O | 542-529 | 30 gallon | Drum |
| Roundup Pro Max T&O | 524-579 | 2.5 gallon Jug | 2/case |
| Rozol Ground Squirrel Bait | 7173-305 | 50 lb. bag | Bag |
| Target Pro Spreader Activator | CA REG 48813 | Gallon Jug | 4/case |
| HP Windsurf Pro Propriety ADJ | | Gallon Jug | 4/Case |
| Telar XP Herbicide | 432-1561 | 8 oz bottle | 8/case |

| Normac Landscape Supply | | | |
|--------------------------|------------------------------------|----------------------|---------------|
| Price/unit | with 1% Local Sales Tax preference | Est. Annual Quantity | Total |
| \$ 290.00 | \$ 289.99 | 24 | \$ 6,960.00 |
| \$ 339.42 | \$ 339.41 | 28 | \$ 9,503.76 |
| \$ 169.71 | \$ 169.70 | 24 | \$ 4,073.04 |
| \$ 303.91 | \$ 303.90 | 46 | \$ 13,979.86 |
| \$ 162.58 | \$ 162.57 | 13 | \$ 2,113.54 |
| \$ 7,545.60 | \$ 7,545.59 | 12 | \$ 90,547.20 |
| \$ 24.34 | \$ 24.33 | 600 | \$ 14,604.00 |
| \$ 27.68 | \$ 27.67 | 68 | \$ 1,882.24 |
| \$ 17.48 | \$ 17.47 | 12 | \$ 209.76 |
| No Bid | | | |
| \$ 1,645.00 | \$ 1,644.99 | 6 | \$ 9,870.00 |
| \$ 235.10 | \$ 235.09 | 92 | \$ 21,629.20 |
| \$ 430.43 | \$ 430.42 | 8 | \$ 3,443.44 |
| \$ 115.26 | \$ 115.25 | 8 | \$ 922.08 |
| \$ 530.14 | \$ 530.13 | 24 | \$ 12,723.36 |
| \$ 122.96 | \$ 122.95 | 20 | \$ 2,459.20 |
| No Bid | | | |
| Alternate, see row below | | | |
| \$ 55.58 | \$ 55.57 | 128 | \$ 7,114.24 |
| \$ 1,021.28 | \$ 1,021.27 | 132 | \$ 134,808.96 |

| Rentokil dba Target | | |
|---------------------|----------------------|---------------|
| Price/unit | Est. Annual Quantity | Total |
| \$ 300.00 | 24 | \$ 7,200.00 |
| \$ 271.82 | 28 | \$ 7,610.96 |
| \$ 135.91 | 24 | \$ 3,261.84 |
| \$ 296.43 | 46 | \$ 13,635.78 |
| \$ 372.26 | 13 | \$ 4,839.38 |
| \$ 7,545.60 | 12 | \$ 90,547.20 |
| \$ 29.83 | 600 | \$ 17,898.00 |
| \$ 35.56 | 68 | \$ 2,418.08 |
| \$ 31.67 | 12 | \$ 380.04 |
| \$ 1,590.68 | 10 | \$ 15,906.80 |
| \$ 1,645.00 | 6 | \$ 9,870.00 |
| \$ 260.00 | 92 | \$ 23,920.00 |
| \$ 499.47 | 8 | \$ 3,995.76 |
| \$ 144.00 | 8 | \$ 1,152.00 |
| \$ 725.90 | 24 | \$ 17,421.60 |
| \$ 156.00 | 20 | \$ 3,120.00 |
| \$ 139.56 | 4 | \$ 558.24 |
| \$ 170.44 | 128 | \$ 21,816.32 |
| | | |
| \$ 1,426.72 | 132 | \$ 188,327.04 |

T & O = Turf and ornamental (herbicide)

\$ 336,843.88

\$ 433,879.04

Color Key:

| |
|---------------|
| Bid Amount |
| Alternate |
| No Bid or Alt |

No Bid on Items 15 & 22, alternate bid on Item 24

Bid on all items as specified

CONTRACT #: **PRC003224**

CONTRACT NAME: **Fertilizers, Herbicides, Pesticides, and Rodenticides for Parks and other
Open Spaces (Citywide)**

CONTRACT PROJECT #: 461081-1001-06001521

SOURCING EVENT ID #: B25061521001

DEPARTMENT: Finance

DIVISION: Procurement

CITY OF SACRAMENTO

GOODS AGREEMENT

THIS CONTRACT is made at Sacramento, California, by and between the **CITY OF SACRAMENTO**, a charter city and municipal corporation ("City"), and

Heritage Landscape Supply Group, Inc., dba Normac Landscape Supply

7440 State Highway 121

McKinney, TX 75070-3104

Phone 214-491-4149 / Fax 214-491-4156 / E-mail info@heritagelsg.com

("Contractor"), as of the Effective Date, as defined below.

The City and Contractor agree as follows:

1. **Effective Date.** This Contract shall be effective on **January 1, 2025**.
2. **Contract Documents.** This Contract includes each of the following documents, which are attached or incorporated by this reference (referred to collectively as the "Contract Documents"):

Invitation to Bid # B25061521001

Exhibit A - Technical Specifications

Exhibit B – Payment

Exhibit C – Insurance

Exhibit D – General Conditions

Purchase Orders referencing the Contract Number

If there is a conflict between the terms and conditions of any document prepared or provided by the Contractor and made a part of this Contract and the other terms or conditions of the Contract, the other terms and conditions of the Contract control.

3. **Goods.** Subject to the terms and conditions set forth in this Contract, Contractor shall provide to City the goods, materials, equipment or supplies described in Exhibit A ("Goods").

Contractor will not be compensated for goods, materials, equipment, or supplies outside the scope of Exhibit A ("Additional Goods") unless, before providing Additional Goods: (a) Contractor

notifies City and City agrees that the Additional Goods are outside the scope of Exhibit A; (b) Contractor estimates the additional compensation required for these Additional Goods; and (c) City, after notice, approves in writing a Supplemental Contract specifying the Additional Goods and the amount of additional compensation to be paid Contractor.

CITY will have no obligations whatsoever under this Contract or any Supplemental Contract, unless and until this Contract or any Supplemental Contract is approved by the City as required by the Sacramento City Code. As used in this Contract, the term "Goods" includes both Goods and Additional Goods as applicable.

4. **Payment.** City shall pay Contractor at the times and in the manner set forth in Exhibit B. Contractor shall submit all invoices to City in the manner specified in Exhibit B.
5. **Facilities and Equipment.** Except as set forth below, Contractor shall, at its sole cost and expense, furnish all facilities and equipment required for Contractor to perform this Contract. City shall furnish to Contractor only the facilities and equipment listed below, if any.

None.

6. **Insurance.** Contractor shall, at its sole cost and expense, maintain the insurance coverage described in the attached Exhibit C.
7. **General Conditions.** Contractor shall comply with the terms and conditions set forth in the attached Exhibit D.
8. **Non-Discrimination in Employee Benefits.** This Contract may be subject to Sacramento City Code chapter 3.54, Non- Discrimination in Employee Benefits by City Contractors. A summary of the requirements, entitled "Requirements of the Non-Discrimination in Employee Benefits Code (Equal Benefits Ordinance)," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Contractor acknowledges and represents that Contractor has read and understands the requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.54. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance.

Contractor's violation of Sacramento City Code chapter 3.54 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

9. **Considering Criminal Conviction Information in the Employment Application Process.** This Contract may be subject to the requirements of Sacramento City Code chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements, entitled "Ban-The-Box Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

The Ban-The-Box Requirements are applicable to certain contracts with the City in an amount of \$250,000 or more (either initial value or total value after amendment) or if the total value of all Contractor's contracts with the City is \$250,000 or more over a 12-month period.

Contractor acknowledges and represents that Contractor has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.62. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance. Contractor shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.62 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.62.

Contractor's violation of Sacramento City Code chapter 3.62 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

10. **Local Business Enterprise Program.** The Local Business Enterprise Program Participation Requirements ("LBE Participation Requirements") are applicable to this Contract. A summary of the requirements, entitled "LBE Participation Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Contractor acknowledges and represents that Contractor has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.60. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance. Contractor shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.60 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.60.

Contractor's violation of Sacramento City Code chapter 3.60 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

11. **Authority.** The person signing this Contract for Contractor represents and warrants that he or she has read, understands, and agrees to all the Contract terms and is fully authorized to sign this Contract on behalf of the Contractor and to bind the Contractor to the performance of the Contract's obligations.

[Signature Pages Follow Exhibits]

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

1. Representatives.

The CITY Representative for this Agreement is:

Gary O'Neill / Contract and Compliance Specialist
City of Sacramento Procurement Division
915 I Street, 2nd Floor
Sacramento, CA
Phone 916-808-7432 / E-mail goneill@cityofsacramento.org

The CONTRACTOR Representative for this Agreement is:

Scott Slater / Territory Manager
Normac Landscape Supply
3449 Longview Drive
Sacramento, CA 95821-7104
Phone 916-661-0249 / E-mail scott.slater@normac1.com

Unless otherwise provided in this Contract, all Contractor questions and correspondence pertaining to this Contract must be addressed to the City Representative. All City questions and correspondence must be addressed to the Contractor Representative.

2. Scope of Services. Contractor shall provide Goods and Services to City as set forth in Attachment 1 to this Exhibit A.

3. Quantities. The quantities stated in Attachment 1 to this Exhibit A or Exhibit B are only estimates of the City's requirements. Contractor shall furnish Goods at the prices quoted, in accordance with the City's available funds and actual needs as they occur throughout the term of this Contract.

The City is not required to purchase all of the Goods listed, or to expend all available funding reflected in Exhibits A or B.

4. Time of Performance. The Goods described in this Contract shall be provided for *four-and-one-half years, January 1, 2025, through June 30, 2029*. Contractor shall provide the Goods in accordance with any schedule in Attachment 1 to this Exhibit A.

5. Delivery and Inspection.

A. Delivery. Unless otherwise stated by the City in writing, delivery of Goods shall be made to the City address set forth in Exhibit A. All shipments are Free on Board (F.O.B.) destination with freight prepaid unless otherwise stated.

Contractor assumes full responsibility for all transportation scheduling and costs, including costs for containers, packing, handling, and insurance. The City reserves the right to request and receive a copy of the freight bill of lading on all purchases shipped F.O.B.

prepaid and added.

Time is of the essence in the delivery. If delivery cannot be made as specified in Exhibit A or as otherwise stated by the City, Contractor shall notify the City immediately to request instructions on how to proceed and shall not make delivery before receipt of instructions. Periods of performance may be extended if, in the sole judgment of the City, the cause of delay justifies an extension.

- B. Inspections: Goods will be inspected at the destination before acceptance by an authorized representative of the City for workmanship, appearance, proper functioning of all equipment and systems, and conformance to all other requirements of this Contract. The Goods shall be delivered to City free of any liens or encumbrances.

Notwithstanding the requirements for any City inspection and testing at the destination and except where specialized inspections or testing are specified for performance solely by the City, Contractor shall perform or have performed the inspections or tests required to substantiate that all Goods provided under the Contract conform to the drawings, specifications, and other Contract requirements, including, if applicable, the technical requirements for the manufacturer's part number(s) specified.

- C. Deficiencies: If deficiencies in the Goods are discovered, Contractor shall correct and redeliver the Goods for re-inspection and acceptance. The period for payment and/or commencement of discount period (if applicable) does not begin until corrective action is complete. The cost of storing rejected Goods and the cost for shipping rejected Goods back to the Contractor or point of origin shall be paid by Contractor.
- D. Inspection of Facilities: If requested by the City, Contractor shall provide the City with an inspection tour of Contractor's facilities where any Goods will be designed, manufactured, or assembled by Contractor.

- 6. **Title/Risk of Loss.** Title, ownership, and risk of loss or damage of the Goods remains with the Contractor until the Goods are delivered to, inspected, and accepted by the City, except when the loss or damage is due to the sole negligence of the City.

The Contractor shall provide goods and services to the City as stated in this agreement.

a.) QUANTITIES UNRESTRICTED

The City is not limited to purchase all its requirements from any one Contractor.

b.) PRICING

Pricing during the term of this agreement will be applied as follows:

- i.) Contract Items - Prices for contract items (see Pricing Schedule) are to be firm for the first year of the contract. After that period, prices for contract items may be renegotiated and revisions made to the list of items comprising the contract items, if agreed to by both parties. Written documentation from the manufacturer shall be submitted to the City prior to consideration of any price increase.
- ii.) Catalog Items - For items normally carried in inventory by the Contractor, but not specifically identified as contract items, the City is to receive discounts equal to or greater than the most favorable discount offered to other customers by the Contractor.
- iii.) Special Orders - For items not identified as contract items and non-catalog (non-inventory) items, quotations may be solicited as deemed appropriate by the City on a case-by-case basis.

c.) DELIVERY GUARANTEE

Contractor shall guarantee delivery within 3 days after receipt of order (ARO). Emergency orders shall be delivered the same day, if placed prior to 10:00 a.m. Pacific Time, or next day if placed after 10:00 a.m. The City of Sacramento will solely determine an emergency order. Failure to comply with emergency orders may be cause for termination.

d.) DELIVERY HOURS

Delivery will be accepted from 7 a.m. to 11 a.m.

e.) DELIVERY METHOD

Delivery must be by truck. Palletized shipments will be accepted. The City will not provide a forklift. Unpalletized shipments must be off-loaded by delivering carrier. The carrier must unpack and set the material in place as directed and remove all debris and packing material.

f.) F.O.B./ FREIGHT

All items are to be supplied F.O.B., Delivered, freight prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

g.) APPLICABLE LAWS SPECIFICALLY INCORPORATED INTO THIS CONTRACT:

- i.) The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Environmental Pesticide Control Act (FEPCCA) of USEPA.
- ii.) California Code of Regulations (Title 3. Food and Agriculture) Division 6. Pesticides and Pest Control Operations, Chapter 2. Pesticides, Subchapter 1. Pesticide Registration.
- iii.) California Code of Regulations (Title 3. Food and Agriculture) Division 6. Pesticides and Pest Control Operations, Chapter 3. Pest Control Operations, Subchapter 2. Work Requirements, Article 4. Storage, Transportation and Disposal.

h.) CERTIFICATION TRAINING:

All City employees applying these chemicals must complete California Department of Pesticide Regulations mandated training. The Contractor will provide annual training and individual training records at no cost to the City.

i.) CONSULTATION SERVICES:

The Contractor shall provide consultation service on the use of the goods without additional cost to the City.

j.) COMPLIANCE DOCUMENTATION:

Federal and State Laws and Regulations concerning pesticide applications are enforced by the County of Sacramento's Agricultural Commissioner's Office. The Contractor will assist in preparing written recommendations for these products and assist with obtaining the necessary permits to use these products.

EXHIBIT B

PAYMENT

1. **Contractor's Compensation.** The total of all fees paid to the Contractor for the provision of Goods as set forth in Exhibit A, including any authorized reimbursable expenses, shall not exceed the total sum of \$ **600,000**. The payments specified in this Exhibit B shall be the only payments made to Contractor unless the City approves a Supplemental Contract.
2. **Pricing.** Contractor shall be paid as set forth in Attachment 1 to this Exhibit B and any applicable special provisions included in the request for bids or proposals. If there is a conflict between Exhibit A or Exhibit B and the Special Provisions, Exhibit A or Exhibit B controls.
3. **Contractor's Reimbursable Expenses.** "Reimbursable Expenses" are limited to actual expenditures of Contractor for expenses that are necessary for the proper satisfaction of the Contract and are only payable if specifically authorized in advance in writing by the City.
4. **Miscellaneous Charges.** No additional charges will be allowed unless specified in the Contract, including charges for transportation, fuel, containers, packing, or disposal.
5. **Price Adjustments for Goods.** Unless otherwise stated, prices are maximum for the term of the Contract. Price adjustments, if allowed under this Contract, must be requested in writing and accompanied by the required information to substantiate the request for price adjustment, as set forth in the Contract. Any allowable request for price adjustment must be delivered to the City at least 30 days before the adjusted prices become effective. No price adjustment allowable under this Contract will be granted retroactively. The City must also be given the benefit of any decline in prices. If any price increase is granted by the City, the increase shall not be greater than 3% from the prior year.
6. **Purchase Orders.** Unless otherwise stated, a purchase order will be issued to the Contractor on behalf of the City. Purchase orders will cite the quantity of Goods or Services requested, the purchase amount, and time of performance. If the time of performance of this Contract extends beyond the close of the City's fiscal year, another purchase order may be issued. No purchase order supersedes any provision of this Contract. Contractor shall not deliver Goods or provide Services until Contractor receives a purchase order or other written notification by the City.
7. **Payments to Contractor.** Contractor is responsible for supplying all documentation necessary to verify invoices to the City's satisfaction.
 - A. Payment terms are NET 30 days, unless the Contractor offers a prompt payment discount that was accepted by the City or as otherwise stated in this Contract. Any prompt payment discounts will be computed from the date of acceptance by the City, or from the date an invoice is received, whichever occurs later.
 - B. Invoices must be submitted to either of the addresses specified below.
 - (1) Email. Submit email invoices and any attachments to:
apinvoices@cityofsacramento.org

(2) Postal Mail. If emailing is not an option, mail to:

A/P Processing Center
City of Sacramento
915 I Street, Floor 4
Sacramento, CA 95814-2608

C. All invoices submitted by Contractor must contain the following information:

- (1) Job/Project Name
- (2) City's current Purchase Order Number
- (3) Contractor's Invoice Number
- (4) Date of Invoice Issuance
- (5) Work Order Number (if applicable)
- (6) City representative identified on the Purchase Order
- (7) Contractor's remit address
- (8) Itemized description of items billed under Invoice
- (9) Itemized description of all authorized Reimbursable Expenses
- (10) Itemized description of all applicable taxes (sales, use, excise, etc.)
- (11) Amount of Invoice (itemize all authorized Reimbursable Expenses)

D. Items must be separated into Goods, Services, and Reimbursable Expenses. All applicable sales, use, excise, or similar taxes, including federal excise tax, must be itemized separately on the invoice. Invoices that do not conform to the format outlined above will be returned to Contractor for correction. CITY is not responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

E. For Goods only, a bill of lading number and weight of shipment will be shown for shipments on the Government Bill of Lading.

F. Unless otherwise specified in this Contract, partial payments will not be made by the City and payment will not be due until the completion of the Goods order. No payment precludes the City's right to inspect. Requests for payment status should be addressed to the City Representative for this Contract.

8. Additional Goods. Additional Goods may be added to the Contract through a Supplemental Contract authorizing the Additional Goods. A Purchase Order may also be used to purchase Additional Goods. The City reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform the Additional Services.

9. Billing Disputes. The burden of proof shall be on the Contractor to establish the accuracy of its invoices. Upon presentation and verification of the information provided by Contractor, the City will review all records and make a final determination and present its finding to Contractor.

10. Accounting Records of Contractor. During performance of this Contract and for a period of three years after completion of performance, Contractor shall maintain all accounting and financial

records related to this Contract, in accordance with generally accepted accounting practices, including records of Contractor's costs for performance under this Contract and records of Contractor's Reimbursable Expenses. Contractor shall keep and make records available for inspection and audit by representatives of the City upon reasonable written notice.

- 11. Sales Tax Requirements.** The City is not exempt from paying sales tax. Sales tax must be shown on the invoice as a separate line item.

- 12. Use Tax Requirements.** On out-of-state purchases, Contractor shall list its Use Tax Permit Number (if applicable) on the invoice, which authorizes Contractor to charge and collect California Sales Tax. The Purchase Order will include sales tax, if applicable to the purchase, regardless of whether an out-of-state Contractor collects California State sales tax or not. The City shall pay Use Tax directly to the California Department of Tax and Fee Administration ("CDTFA") if the out-of-state Contractor is not required to collect California Sales Tax. During the performance of this Contract, Contractor, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of tangible personal property used to perform the Contract and shipped from outside California, Contractor and any subcontractor(s) leasing or purchasing such tangible personal property shall obtain a Use Tax Direct Payment Permit from the CDTFA in accordance with the applicable CDTFA criteria and requirements.

 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the CDTFA and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the CDTFA and shall provide a copy of each remittance to the City.

 - C. The above provisions apply in all instances unless prohibited by the funding source for the Contract.

- 13. Excise Tax Requirements.** The City of Sacramento is exempt from the payment of Federal Excise Tax. An exemption certificate will be submitted to Contractor upon request. If Federal Excise Tax is applicable to the transaction, it must be so stated and excluded from the price.

- 14. Tax Payments.** Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of the payment upon request. Contractor hereby agrees to indemnify City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section.

Attachment 4 to 2024-01809

PRICING

Pricing during the term of this agreement will be applied as follows:

- a.) Contract Items - Prices for contract items below are to be firm for the first year of the contract. After that period, prices for contract items may be renegotiated and revisions made to the list of items comprising the contract items, if agreed to by both parties. Written documentation from the manufacturer shall be submitted to the City prior to consideration of any price increase.
- b.) Catalog Items - For items normally carried in inventory by the Contractor, but not specifically identified as contract items, the City is to receive discounts equal to or greater than the most favorable discount offered to other customers by the Contractor.
- c.) Special Orders - For items not identified as contract items and non-catalog (non-inventory) items, quotations may be solicited as deemed appropriate by the City on a case-by-case basis.

| Product Name | EPA Code | Container size | Sales Unit | Price/unit |
|---|-----------------|-----------------------|-------------------|-------------------|
| Capstone MCP | 62719-572 | 2.5 gallon Jug | 2/case | \$ 290.00 |
| Cheetah Pro Herbicide T&O | 228-743 | 2.5 gallon Jug | 2/case | \$ 339.42 |
| Cheetah Pro Herbicide T&O | 228-743 | 2.5 gallon Jug | Jug | \$ 169.71 |
| Clearcast Aquatic Herbicide | 241-437 | Gallon Jug | Gallon | \$ 303.91 |
| Citrine Ultra | 8959-53 | 2.5 gallon Jug | 2/case | \$ 162.58 |
| Esplanade 200SC Agency | 432-1516 | 2.5 gallon Jug | 2/case | \$ 7,545.60 |
| Fertilizer 15-15-15 TS Pro NPK (Marion) | N/A | 50 lb. bag | Bag | \$ 24.34 |
| Fertilizer 31-03-05 5% TPT 1800 (Marion) | N/A | 50 lb. bag | Bag | \$ 27.68 |
| Glove Green Nitrile 13 in. 15 mil Size 10 | N/A | 12 / box | Box | \$ 14.46 |
| Milestone Specialty MCP | 62719-519 | 2.5 gallon Jug | 2/case | \$ 1,645.00 |
| Pendulum AquaCap (BASF) | 241-416 | 2.5 gallon Jug | 2/case | \$ 235.10 |
| Ranger Pro Herbicide | N/A | 30 gallon | Drum | \$ 430.43 |
| Roundup Custom T&O | 524-343 | 2.5 gallon Jug | 2/case | \$ 115.26 |
| Roundup Pro Conc T&O | 542-529 | 30 gallon | Drum | \$ 530.14 |
| Roundup Pro Max T&O | 524-579 | 2.5 gallon Jug | 2/case | \$ 122.96 |
| HP Windsurf Pro Proprietary ADJ Nonionic Surfactant 90:10 | | Gallon Jug | 4/case | \$ 55.56 |
| Telar XP Herbicide | 432-1561 | 8 oz bottle | 8/case | \$ 1,021.28 |

EXHIBIT C

INSURANCE

1. **Insurance Requirements.** During the entire term of this Contract, Contractor shall maintain the insurance coverage described in the Insurance Terms below. Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified under this Contract. No additional compensation will be provided for Contractor's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the City.

Contractor's liability to the City is not in any way limited to or affected by the amount of insurance coverage required or carried by the Contractor in connection with this Contract.

2. **General Liability Minimum Scope and Limits of Insurance Coverage.** Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of the Contractor and subcontractors, products and completed operations of Contractor and subcontractors, and premises owned, leased, or used by Contractor and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of Contractor and subcontractors; products and completed operations of Contractor and subcontractors; and premises owned, leased, or used by Contractor and subcontractors.

3. **Automobile Liability Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

 X Automobile Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

 No automobile liability insurance is required, and by signing this Contract, Contractor certifies as follows:

“Contractor certifies that a motor vehicle will not be used in the performance of any work or services under this agreement. If, however, Contractor does transport items under this Contract, or this Contract is amended to require any employees of Contractor to use a

vehicle to perform services under the Contract, Contractor understands that it must maintain and provide evidence of Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.”

4. **Excess Insurance.** The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage, provided that any umbrella or excess insurance contains, or is endorsed to contain, a provision that it will apply on a primary basis for the benefit of the City, and any insurance or self-insurance maintained by City, its officials, employees, or volunteers will be in excess of Contractor's umbrella or excess coverage and will not contribute to it.
5. **Workers' Compensation Minimum Scope and Limits of Insurance Coverage.** (*Check the applicable provision.*)

Workers' Compensation Insurance is required with statutory limits and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the City.

No work or services will be performed on or at CITY facilities or CITY Property, therefore a Workers' Compensation waiver of subrogation in favor of the CITY is not required.

No Workers' Compensation insurance is required, and by signing this Contract, Contractor certifies as follows:

“Contractor certifies that its business has no employees, and that it does not employ anyone, and is therefore exempt from the legal requirements to provide Workers' Compensation insurance. If, however, Contractor hires any employee during the term of this Contract, Contractor understands that Workers' Compensation with statutory limits and Employer's Liability Insurance with a limit of not less than one million dollars (\$1,000,000) is required. The Workers' Compensation policy will include a waiver of subrogation in favor of the City.”

6. **Other Insurance Provisions.** The policies must contain, or be endorsed to contain, the following provisions:
- A. Contractor's insurance coverage, including excess insurance, shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers will be in excess of Contractor's insurance and will not contribute with it.
 - B. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City, its officials, employees or volunteers.
 - C. Coverage shall state that Contractor's insurance applies separately to each insured

against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Contractor shall provide the City with 30 days written notice of cancellation or material change in the policy language or terms.

7. Acceptability of Insurance. Insurance must be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Exhibit C must be declared to and approved by the City in writing before execution of this Contract.

8. Verification of Coverage.

A. Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. Certificates of insurance must be signed by an authorized representative of the insurance carrier. Copies of policies shall be delivered to the City Representative on demand.

B. Contractor shall send all insurance certificates and endorsements, including policy renewals, during the term of this Contract directly to:

City of Sacramento
c/o Exigis LLC
PO Box 947
Murrieta, CA 92564

C. Certificate Holder must be listed as:

City of Sacramento
c/o Exigis LLC
PO Box 947
Murrieta, CA 92564

D. The City may withdraw its offer of Contract or cancel this Contract if the certificates of insurance and endorsements required have not been provided before execution of this Contract. The City may withhold payments to Contractor and/or cancel the Contract if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

9. Subcontractor Insurance Coverage. Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Exhibit C.

EXHIBIT D

GENERAL CONDITIONS

1. Independent Contractor.

- A. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel will be entitled to any benefits payable to City employees. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Contract, and Contractor will be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance under this Contract.
- B. It is further understood and agreed by the parties that Contractor, in the performance of its obligations, is subject to the City's control and direction as to the designation of tasks to be performed and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by Contractor for accomplishing the results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Contract, this use will be at the Contractor's sole discretion based on the Contractor's determination that the use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Contract. As used in this Contract, "sole discretion" or "sole judgment" means that the party authorized to exercise its discretion or judgment may do so based on an unfettered assessment of its own interests, without considering how its decision affects the other party, and unconstrained by the implied covenant of good faith and fair dealing.
- C. If, in the performance of this Contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under the direction, supervision, and control of Contractor. Except as otherwise provided in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor will issue W-2 or 1099 Forms for income and employment tax purposes for all Contractor's assigned personnel and subcontractors.
- D. The provisions of this section will survive any expiration or termination of this Contract. Nothing in this Contract creates an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by any additional persons or companies so long as Contractor does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** Contractor represents and warrants that Contractor has, and shall maintain at all times during the term of this Contract at its sole cost and expense, all licenses, permits, qualifications, and approvals of any nature that are legally required for Contractor to practice its profession or fulfill the terms of this Contract, including a City Business Operations Tax Certificate and any required certification issued by the California Secretary of State.
3. **Time.** Time is off the essence in the performance of this Contract. Contractor shall devote the necessary time and effort to its performance under this Contract. Neither party will be considered in default of this Contract, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **Contractor Not Agent.** Except as City may specify in writing, Contractor and Contractor's personnel have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.
5. **Conflicts of Interest.** Contractor covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the City's interests or that would in any way hinder Contractor's performance under this Contract. Contractor further covenants that in the performance of this Contract, no person having any such interest will be employed by it as an officer, employee, agent or subcontractor, without the City's written consent.

Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the City's interests during the performance of this Contract. If Contractor is or employs a former officer or employee of the City, Contractor and any former City officer or employee shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any City department, board, commission, or committee.

6. **Hazardous Substances.** "Hazardous Substances" means any substance, material, waste, or other pollutant or contaminant that is or becomes designated, classified, or regulated as hazardous or toxic under any law, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. If Contractor is shipping Hazardous Substances, Contractor must supply a Safety Data Sheet ("SDS") with the first shipment of Hazardous Substances to each City location receiving the Hazardous Substances. If the content of an SDS is revised, Contractor must provide a revised SDS to each City location receiving Hazardous Substances.
7. **Confidentiality of City Information.** During performance of this Contract, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City.

Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or

communicate in any manner any City Information to any third party without the City's prior written consent.

In addition, Contractor must comply with all City policies governing the use of the City network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by Contractor of this section is a material violation of this Contract and shall justify legal and equitable relief.

8. Contractor Information.

- A. City shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor under this Contract. In this Contract, the term "information" means and includes: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.
- B. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor under this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten days after City is served with any such claim, action, lawsuit or other proceeding. However, City's failure to provide notice within the ten-day period does not relieve Contractor of its obligations hereunder, which survive any termination or expiration of this Contract.
- C. All proprietary and other information received from Contractor by City, whether received in connection with Contractor's proposal to City or in connection with Contractor's performance, will be disclosed upon receipt of a request for disclosure, in accordance with the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Contractor of any request for the disclosure of such information. The Contractor will then have five days from the date it receives notice to petition the court for a protective order to prevent the disclosure of the information. The Contractor shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by Contractor to respond to the notice provided by City and seek a protective order, in accordance with the provisions of subsection C, above, constitutes a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and the information will be disclosed by CITY in accordance with the Public Records Act.

9. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business, including a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, name change, or loss of key personnel, it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition that may jeopardize the scheduled delivery or fulfillment of Contractor's obligations to the City under this Contract.
10. **Standard of Performance.** Contractor shall perform in the manner and according to the standards currently observed by a competent practitioner of Contractor's profession in California and in compliance with all requirements of this Contract. All products that Contractor delivers to City under this Contract must be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's profession.

Contractor shall assign only competent personnel to perform on its behalf under this Contract. Contractor must notify the City in writing of any changes in Contractor's staff assigned to perform under this Contract, before any performance by the new staff member. If the City, in its sole discretion, determines that any person assigned by the Contractor to perform under this Contract is not performing in accordance with the standards required herein, City shall provide notice to Contractor. Contractor shall immediately remove the assigned person upon receipt of the notice.

11. **Performance or Different Terms and Conditions.** The City's subsequent performance will not be construed as either acceptance of additional or different terms and conditions or a counteroffer by the Contractor, nor will the City's subsequent performance be viewed as acceptance of any provision of the Uniform Commercial Code, as adopted by any State, that is contrary to the terms and conditions contained herein. Contractor's performance shall conform to the applicable requirements of the Sacramento City Charter, Sacramento City Code, and all applicable State and Federal laws, and all the requirements of this Contract. The California Commercial Code will apply except as otherwise provided in the Contract.
12. **Emergency/Declared Disaster Requirements.** If an emergency is declared by the City Manager, or if any portion of the City is declared a disaster area by the county, state or federal government, this Contract may be subjected to increased usage. The Contractor shall serve the City during a declared emergency or disaster, subject to the same terms and conditions that apply during non-emergency / non-disaster conditions. The pricing set forth in this Contract will apply, without mark-up, regardless of the circumstances. If the Contractor is unable to fulfill the terms of the Contract because of a disruption in its chain of supply or service, then the Contractor shall provide proof of the disruption. Acceptable forms of proof will include a letter or notice from the Contractor's source stating the reason for the disruption
13. **Term; Suspension; Termination.**
- A. This Contract is effective on the Effective Date and continues in effect until both parties have fully performed their respective obligations under this Contract, unless sooner terminated as provided herein.
 - B. City shall have the right at any time to suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. Upon receipt of

such notice, Contractor shall immediately suspend its activities under this Contract, as specified in the notice.

C. The City shall have the right to terminate this Contract at any time by giving a written notice of termination to Contractor. Upon receipt of such notice, Contractor shall immediately cease performance under this Contract as specified in the notice. If the City terminates this Contract:

(1) Contractor shall, not later than five days after receipt of the notice, deliver all information prepared under this Contract to the City.

(2) The City shall pay Contractor the reasonable value of Goods or Services provided by Contractor before termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by Contractor had the Contract not been terminated or had Contractor completed performance required by this Contract. Contractor shall furnish to the City any financial information requested by the City to determine the reasonable value of the Goods or Services provided by Contractor. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.

14. Default by Contractor. In case of default by the Contractor, the City reserves the right to procure the Goods or Services from other sources and deduct from any monies due, or that may thereafter become due to the Contractor, the difference between the price named in this Contract and the actual cost to the City to procure from an alternate source. Prices paid by the City will be considered the prevailing market price at the time such purchase is made.

15. Guarantee and Warranty. Contractor assumes design responsibility and warrants the articles to be free from design defect and suitable for the purposes intended by City. If it is determined by the City that the Goods and Services do not meet the minimum requirements of this Contract, the Contractor shall correct the same at Contractor's sole expense.

A. The Contractor agrees that the Goods and Services furnished under this Contract will be covered by the industry standard or better warranty.

B. Contractor further warrants that the Goods and Services furnished under this Contract will be covered by the most favorable commercial warranties the Contractor gives to any customer for the Goods and Services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City at law or equity, or by any other clause of this Contract.

C. Any additional warranties provided by law, including the warranty of merchantability and warranty of fitness for a particular purpose will remain in full force and effect and inure to the City's benefit. City reserves all rights and remedies provided by law for breach of any applicable warranty related to the Goods and Services.

D. City's inspections, approval, acceptance, or payment for all or part of any Goods and

Services will in no way affect City's warranty rights.

16. Indemnity.

- A. Indemnity: Contractor shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the work or services performed under this Contract, including, any fees and costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including Liabilities for personal injury or death, damage to personal, real or intellectual property, damage to the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Contract by Contractor, any subcontractor (including lower-tier subcontractors) or agent of Contractor, their respective officers and employees, and anyone else for whose acts or omissions any of them may be liable, whether or not the Liabilities (1) are caused in part by a party indemnified hereunder, or (ii) are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense, to the extent arising from the active negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the supervision and control of Contractor or any subcontractor (including lower-tier subcontractors) or agent of Contractor.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by City of any of the insurance policies or coverages described in this Contract does not affect or limit any of City's rights under this section, nor do the limits of any insurance limit the liability of Contractor hereunder. This section will not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of section 8.B., above.
- C. Survival. The provisions of this section will survive any expiration or termination of this Contract.

17. Funding Availability.

- A. This Contract is subject to the budget and fiscal provisions of the Charter and the Sacramento City Code.
- B. The City's payment obligation under this Contract will not exceed the amount of funds appropriated and approved for this Contract by the Sacramento City Council.
- C. This Section shall govern over any other contrary provision of the Contract.

18. Equal Employment Opportunity. During the performance of this Contract, Contractor, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: Contractor shall comply with all state, local, and federal anti-discrimination laws and regulations, including the Executive Order 11246 entitled “Equal Opportunity in Federal Employment”, as amended by Executive Order 11375, 12086, and 13672, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), referred to collectively as the “Regulations.”

- B. Nondiscrimination: Contractor, with regards to the work performed by it after award and before completion of the work under this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor’s obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

- D. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with the Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Contract, the City shall impose any sanctions it determines are appropriate including:
 - (1) Withholding of payments to Contractor under this Contract until Contractor complies;
 - (2) Cancellation, termination, or suspension of this Contract, in whole or in part.

- F. Incorporation of Provisions: Contractor shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. The City may direct Contractor to take specific actions to enforce these provisions, including sanctions for noncompliance; provided, however, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request that the City join such litigation to protect the City’s interests.

- 19. Entire Agreement.** This Contract, including all Exhibits and documents referenced herein, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had before the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code.
- 20. Modification of Contract.** The Contractor shall take no direction from any City employee that changes the executed terms and conditions of the Contract, including Exhibit A, or any change that impacts the cost, price, or schedule, before receiving a written, signed modification to the Contract.
- 21. Severability.** If a court with jurisdiction rules that any portion of this Contract or its application to any person or circumstance is invalid or unenforceable, the remainder of this Contract will not be affected thereby and will remain valid and enforceable as written, to the greatest extent permitted by law.
- 22. Waiver.** Neither the City's acceptance of, or payment for, any Goods or Services, nor any waiver by either party of any default, breach or condition precedent, will be construed as a waiver of any provision of this Contract, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver will be effective unless it is in writing and signed by the waiving party.
- 23. Governing Law.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of California, except that the rule of interpretation in California Civil Code section 1654 will not apply. Venue of any litigation arising out of this Contract will lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- 24. Assignment Prohibited.** The expertise and experience of Contractor are material considerations for this Contract. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on Contractor under this Agreement. In recognition of this interest, Contractor shall not assign any right or obligation pursuant to this Contract without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
- 25. Binding Effect.** This Contract is binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 24, above.
- 26. Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished under the Contract, including the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

27. Debarment Certification

- A. Pursuant to 2 CFR, Part 200, and applicable Executive Orders, the City is restricted in its ability to contract with certain parties that are debarred, suspended, or otherwise excluded or ineligible for participating in Federal assistance programs or activities. By signing this Agreement, CONTRACTOR warrants and certifies under penalty of perjury under the laws of the State of California that Contractor, including any owner, partner, director, officer, or principal of the CONTRACTOR, or any person in a position with management responsibility or responsibility for the administration of federal funds:
- (1) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
 - (2) Has not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or other criminal felony;
 - (3) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
 - (4) Has not, within a three-year period preceding this certification, had one or more public contracts (federal, state, or local) or transactions terminated for cause or default.
 - (5) Has not been notified, within a three-year period preceding this certification, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied. Federal taxes are considered delinquent if the tax liability has been finally determined and the taxpayer is delinquent in making payment, as defined in Section 52.209-5 of the Federal Acquisition Regulations.
- B. CONTRACTOR further warrants and certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency. Any exceptions to the warranties and certifications in this Section must be disclosed to the City.
- C. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor's responsibility. Disclosures must indicate to whom exceptions apply, the initiating agency, and dates of action.
- D. City will review the Federal Government's System for Award Management Exclusions maintained by the General Services Administration for eligibility, prior to the execution of this Agreement. The CONTRACTOR shall provide immediate written notice to the City if, at any time prior to execution, the CONTRACTOR learns this certification is erroneous or has become erroneous by reason of changed circumstances. If it is later determined that the Contractor's warranties and certification in this Section were erroneous, the City may terminate this Agreement for default.

SIGNATURES

The parties have signed this Contract, effective as of the day and year first stated above.

CONTRACTOR

Under penalty of perjury, I certify that the information provided here is correct.

Signature:

Title:

Additional Signature (if required):

Title:

CITY OF SACRAMENTO

A Municipal Corporation

APPROVED AS TO FORM:

Signature:

Title:

Reviewed By:

Signature:

Title:

Approved By:

Signature:

Title:

Additional Signature (if required):

Title:

CONTRACT #: **PRC003225**

CONTRACT NAME: **Fertilizers, Herbicides, Pesticides, and Rodenticides for Parks and other
Open Spaces (Citywide)**

CONTRACT PROJECT #: 461081-1001-06001521

SOURCING EVENT ID #: B25061521001

DEPARTMENT: Finance

DIVISION: Procurement

CITY OF SACRAMENTO

GOODS AGREEMENT

THIS CONTRACT is made at Sacramento, California, by and between the **CITY OF SACRAMENTO**, a charter city and municipal corporation ("City"), and

Rentokil North America dba Target Specialty Products

524 Galveston Street

West Sacramento, CA 95691-2210

Phone 800-533-0816 / Fax 916-374-0900 / E-mail dave.patterson@target-specialty.com

("Contractor"), as of the Effective Date, as defined below.

The City and Contractor agree as follows:

1. **Effective Date.** This Contract shall be effective on **January 1, 2025**.
2. **Contract Documents.** This Contract includes each of the following documents, which are attached or incorporated by this reference (referred to collectively as the "Contract Documents"):

Invitation to Bid # B25061521001

Exhibit A - Technical Specifications

Exhibit B – Payment

Exhibit C – Insurance

Exhibit D – General Conditions

Purchase Orders referencing the Contract Number

If there is a conflict between the terms and conditions of any document prepared or provided by the Contractor and made a part of this Contract and the other terms or conditions of the Contract, the other terms and conditions of the Contract control.

3. **Goods.** Subject to the terms and conditions set forth in this Contract, Contractor shall provide to City the goods, materials, equipment or supplies described in Exhibit A ("Goods").

Contractor will not be compensated for goods, materials, equipment, or supplies outside the scope of Exhibit A ("Additional Goods") unless, before providing Additional Goods: (a) Contractor notifies City and City agrees that the Additional Goods are outside the scope of Exhibit A; (b)

Contractor estimates the additional compensation required for these Additional Goods; and (c) City, after notice, approves in writing a Supplemental Contract specifying the Additional Goods and the amount of additional compensation to be paid Contractor.

CITY will have no obligations whatsoever under this Contract or any Supplemental Contract, unless and until this Contract or any Supplemental Contract is approved by the City as required by the Sacramento City Code. As used in this Contract, the term "Goods" includes both Goods and Additional Goods as applicable.

4. **Payment.** City shall pay Contractor at the times and in the manner set forth in Exhibit B. Contractor shall submit all invoices to City in the manner specified in Exhibit B.
5. **Facilities and Equipment.** Except as set forth below, Contractor shall, at its sole cost and expense, furnish all facilities and equipment required for Contractor to perform this Contract. City shall furnish to Contractor only the facilities and equipment listed below, if any.

None.

6. **Insurance.** Contractor shall, at its sole cost and expense, maintain the insurance coverage described in the attached Exhibit C.
7. **General Conditions.** Contractor shall comply with the terms and conditions set forth in the attached Exhibit D.
8. **Non-Discrimination in Employee Benefits.** This Contract may be subject to Sacramento City Code chapter 3.54, Non- Discrimination in Employee Benefits by City Contractors. A summary of the requirements, entitled "Requirements of the Non-Discrimination in Employee Benefits Code (Equal Benefits Ordinance)," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Contractor acknowledges and represents that Contractor has read and understands the requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.54. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance.

Contractor's violation of Sacramento City Code chapter 3.54 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

9. **Considering Criminal Conviction Information in the Employment Application Process.** This Contract may be subject to the requirements of Sacramento City Code chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements, entitled "Ban-The-Box Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Attachment 5 to 2024-01809

The Ban-The-Box Requirements are applicable to certain contracts with the City in an amount of \$250,000 or more (either initial value or total value after amendment) or if the total value of all Contractor's contracts with the City is \$250,000 or more over a 12-month period.

Contractor acknowledges and represents that Contractor has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.62. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance. Contractor shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.62 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.62.

Contractor's violation of Sacramento City Code chapter 3.62 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

10. **Local Business Enterprise Program.** The Local Business Enterprise Program Participation Requirements ("LBE Participation Requirements") are applicable to this Contract. A summary of the requirements, entitled "LBE Participation Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Contractor acknowledges and represents that Contractor has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.60. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance. Contractor shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.60 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.60.

Contractor's violation of Sacramento City Code chapter 3.60 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

11. **Authority.** The person signing this Contract for Contractor represents and warrants that he or she has read, understands, and agrees to all the Contract terms and is fully authorized to sign this Contract on behalf of the Contractor and to bind the Contractor to the performance of the Contract's obligations.

[Signature Pages Follow Exhibits]

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

1. Representatives.

The CITY Representative for this Agreement is:

Gary O'Neill / Contract and Compliance Specialist
City of Sacramento Procurement Division
915 I Street, 2nd Floor
Sacramento, CA
Phone 916-808-7432 / E-mail goneill@cityofsacramento.org

The CONTRACTOR Representative for this Agreement is:

Dave Patterson / Pest Control Advisor 075511
Target Specialty Products
524 Galveston Street
West Sacramento, CA 95691-2210
Phone 916-799-0231 / E-mail dave.patterson@target-specialty.com

Unless otherwise provided in this Contract, all Contractor questions and correspondence pertaining to this Contract must be addressed to the City Representative. All City questions and correspondence must be addressed to the Contractor Representative.

2. Scope of Services. Contractor shall provide Goods and Services to City as set forth in Attachment 1 to this Exhibit A.

3. Quantities. The quantities stated in Attachment 1 to this Exhibit A or Exhibit B are only estimates of the City's requirements. Contractor shall furnish Goods at the prices quoted, in accordance with the City's available funds and actual needs as they occur throughout the term of this Contract.

The City is not required to purchase all of the Goods listed, or to expend all available funding reflected in Exhibits A or B.

4. Time of Performance. The Goods described in this Contract shall be provided for *four-and-one-half years, January 1, 2025, through June 30, 2029*. Contractor shall provide the Goods in accordance with any schedule in Attachment 1 to this Exhibit A.

5. Delivery and Inspection.

A. Delivery. Unless otherwise stated by the City in writing, delivery of Goods shall be made to the City address set forth in Exhibit A. All shipments are Free on Board (F.O.B.) destination with freight prepaid unless otherwise stated.

Contractor assumes full responsibility for all transportation scheduling and costs, including costs for containers, packing, handling, and insurance. The City reserves the right to request and receive a copy of the freight bill of lading on all purchases shipped F.O.B.

prepaid and added.

Time is of the essence in the delivery. If delivery cannot be made as specified in Exhibit A or as otherwise stated by the City, Contractor shall notify the City immediately to request instructions on how to proceed and shall not make delivery before receipt of instructions. Periods of performance may be extended if, in the sole judgment of the City, the cause of delay justifies an extension.

- B. Inspections: Goods will be inspected at the destination before acceptance by an authorized representative of the City for workmanship, appearance, proper functioning of all equipment and systems, and conformance to all other requirements of this Contract. The Goods shall be delivered to City free of any liens or encumbrances.

Notwithstanding the requirements for any City inspection and testing at the destination and except where specialized inspections or testing are specified for performance solely by the City, Contractor shall perform or have performed the inspections or tests required to substantiate that all Goods provided under the Contract conform to the drawings, specifications, and other Contract requirements, including, if applicable, the technical requirements for the manufacturer's part number(s) specified.

- C. Deficiencies: If deficiencies in the Goods are discovered, Contractor shall correct and redeliver the Goods for re-inspection and acceptance. The period for payment and/or commencement of discount period (if applicable) does not begin until corrective action is complete. The cost of storing rejected Goods and the cost for shipping rejected Goods back to the Contractor or point of origin shall be paid by Contractor.
- D. Inspection of Facilities: If requested by the City, Contractor shall provide the City with an inspection tour of Contractor's facilities where any Goods will be designed, manufactured, or assembled by Contractor.

- 6. **Title/Risk of Loss.** Title, ownership, and risk of loss or damage of the Goods remains with the Contractor until the Goods are delivered to, inspected, and accepted by the City, except when the loss or damage is due to the sole negligence of the City.

The Contractor shall provide goods and services to the City as stated in this agreement.

a.) QUANTITIES UNRESTRICTED

The City is not limited to purchase all its requirements from any one Contractor.

b.) PRICING

Pricing during the term of this agreement will be applied as follows:

- i.) Contract Items - Prices for contract items (see Pricing Schedule) are to be firm for the first year of the contract. After that period, prices for contract items may be renegotiated and revisions made to the list of items comprising the contract items, if agreed to by both parties. Written documentation from the manufacturer shall be submitted to the City prior to consideration of any price increase.
- ii.) Catalog Items - For items normally carried in inventory by the Contractor, but not specifically identified as contract items, the City is to receive discounts equal to or greater than the most favorable discount offered to other customers by the Contractor.
- iii.) Special Orders - For items not identified as contract items and non-catalog (non-inventory) items, quotations may be solicited as deemed appropriate by the City on a case-by-case basis.

c.) DELIVERY GUARANTEE

Contractor shall guarantee delivery within 3 days after receipt of order (ARO). Emergency orders shall be delivered the same day, if placed prior to 10:00 a.m. Pacific Time, or next day if placed after 10:00 a.m. The City of Sacramento will solely determine an emergency order. Failure to comply with emergency orders may be cause for termination.

d.) DELIVERY HOURS

Delivery will be accepted from 7 a.m. to 11 a.m.

e.) DELIVERY METHOD

Delivery must be by truck. Palletized shipments will be accepted. The City will not provide a forklift. Unpalletized shipments must be off-loaded by delivering carrier. The carrier must unpack and set the material in place as directed and remove all debris and packing material.

f.) F.O.B./ FREIGHT

All items are to be supplied F.O.B., Delivered, freight prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

g.) APPLICABLE LAWS SPECIFICALLY INCORPORATED INTO THIS CONTRACT:

- i.) The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Environmental Pesticide Control Act (FEPCA) of USEPA.
- ii.) California Code of Regulations (Title 3. Food and Agriculture) Division 6. Pesticides and Pest Control Operations, Chapter 2. Pesticides, Subchapter 1. Pesticide Registration.
- iii.) California Code of Regulations (Title 3. Food and Agriculture) Division 6. Pesticides and Pest Control Operations, Chapter 3. Pest Control Operations, Subchapter 2. Work Requirements, Article 4. Storage, Transportation and Disposal.

h.) CERTIFICATION TRAINING:

All City employees applying these chemicals must complete California Department of Pesticide Regulations mandated training. The Contractor will provide annual training and individual training records at no cost to the City.

i.) CONSULTATION SERVICES:

The Contractor shall provide consultation service on the use of the goods without additional cost to the City.

j.) COMPLIANCE DOCUMENTATION:

Federal and State Laws and Regulations concerning pesticide applications are enforced by the County of Sacramento's Agricultural Commissioner's Office. The Contractor will assist in preparing written recommendations for these products and assist with obtaining the necessary permits to use these products.

EXHIBIT B

PAYMENT

1. **Contractor's Compensation.** The total of all fees paid to the Contractor for the provision of Goods as set forth in Exhibit A, including any authorized reimbursable expenses, shall not exceed the total sum of \$ **600,000**. The payments specified in this Exhibit B shall be the only payments made to Contractor unless the City approves a Supplemental Contract.
2. **Pricing.** Contractor shall be paid as set forth in Attachment 1 to this Exhibit B and any applicable special provisions included in the request for bids or proposals. If there is a conflict between Exhibit A or Exhibit B and the Special Provisions, Exhibit A or Exhibit B controls.
3. **Contractor's Reimbursable Expenses.** "Reimbursable Expenses" are limited to actual expenditures of Contractor for expenses that are necessary for the proper satisfaction of the Contract and are only payable if specifically authorized in advance in writing by the City.
4. **Miscellaneous Charges.** No additional charges will be allowed unless specified in the Contract, including charges for transportation, fuel, containers, packing, or disposal.
5. **Price Adjustments for Goods.** Unless otherwise stated, prices are maximum for the term of the Contract. Price adjustments, if allowed under this Contract, must be requested in writing and accompanied by the required information to substantiate the request for price adjustment, as set forth in the Contract. Any allowable request for price adjustment must be delivered to the City at least 30 days before the adjusted prices become effective. No price adjustment allowable under this Contract will be granted retroactively. The City must also be given the benefit of any decline in prices. If any price increase is granted by the City, the increase shall not be greater than 3% from the prior year.
6. **Purchase Orders.** Unless otherwise stated, a purchase order will be issued to the Contractor on behalf of the City. Purchase orders will cite the quantity of Goods or Services requested, the purchase amount, and time of performance. If the time of performance of this Contract extends beyond the close of the City's fiscal year, another purchase order may be issued. No purchase order supersedes any provision of this Contract. Contractor shall not deliver Goods or provide Services until Contractor receives a purchase order or other written notification by the City.
7. **Payments to Contractor.** Contractor is responsible for supplying all documentation necessary to verify invoices to the City's satisfaction.
 - A. Payment terms are NET 30 days, unless the Contractor offers a prompt payment discount that was accepted by the City or as otherwise stated in this Contract. Any prompt payment discounts will be computed from the date of acceptance by the City, or from the date an invoice is received, whichever occurs later.
 - B. Invoices must be submitted to either of the addresses specified below.
 - (1) Email. Submit email invoices and any attachments to:
apinvoices@cityofsacramento.org

(2) Postal Mail. If emailing is not an option, mail to:

A/P Processing Center
City of Sacramento
915 I Street, Floor 4
Sacramento, CA 95814-2608

C. All invoices submitted by Contractor must contain the following information:

- (1) Job/Project Name
- (2) City's current Purchase Order Number
- (3) Contractor's Invoice Number
- (4) Date of Invoice Issuance
- (5) Work Order Number (if applicable)
- (6) City representative identified on the Purchase Order
- (7) Contractor's remit address
- (8) Itemized description of items billed under Invoice
- (9) Itemized description of all authorized Reimbursable Expenses
- (10) Itemized description of all applicable taxes (sales, use, excise, etc.)
- (11) Amount of Invoice (itemize all authorized Reimbursable Expenses)

D. Items must be separated into Goods, Services, and Reimbursable Expenses. All applicable sales, use, excise, or similar taxes, including federal excise tax, must be itemized separately on the invoice. Invoices that do not conform to the format outlined above will be returned to Contractor for correction. CITY is not responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

E. For Goods only, a bill of lading number and weight of shipment will be shown for shipments on the Government Bill of Lading.

F. Unless otherwise specified in this Contract, partial payments will not be made by the City and payment will not be due until the completion of the Goods order. No payment precludes the City's right to inspect. Requests for payment status should be addressed to the City Representative for this Contract.

8. Additional Goods. Additional Goods may be added to the Contract through a Supplemental Contract authorizing the Additional Goods. A Purchase Order may also be used to purchase Additional Goods. The City reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform the Additional Services.

9. Billing Disputes. The burden of proof shall be on the Contractor to establish the accuracy of its invoices. Upon presentation and verification of the information provided by Contractor, the City will review all records and make a final determination and present its finding to Contractor.

10. Accounting Records of Contractor. During performance of this Contract and for a period of three years after completion of performance, Contractor shall maintain all accounting and financial

records related to this Contract, in accordance with generally accepted accounting practices, including records of Contractor's costs for performance under this Contract and records of Contractor's Reimbursable Expenses. Contractor shall keep and make records available for inspection and audit by representatives of the City upon reasonable written notice.

- 11. Sales Tax Requirements.** The City is not exempt from paying sales tax. Sales tax must be shown on the invoice as a separate line item.

- 12. Use Tax Requirements.** On out-of-state purchases, Contractor shall list its Use Tax Permit Number (if applicable) on the invoice, which authorizes Contractor to charge and collect California Sales Tax. The Purchase Order will include sales tax, if applicable to the purchase, regardless of whether an out-of-state Contractor collects California State sales tax or not. The City shall pay Use Tax directly to the California Department of Tax and Fee Administration ("CDTFA") if the out-of-state Contractor is not required to collect California Sales Tax. During the performance of this Contract, Contractor, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of tangible personal property used to perform the Contract and shipped from outside California, Contractor and any subcontractor(s) leasing or purchasing such tangible personal property shall obtain a Use Tax Direct Payment Permit from the CDTFA in accordance with the applicable CDTFA criteria and requirements.

 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the CDTFA and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the CDTFA and shall provide a copy of each remittance to the City.

 - C. The above provisions apply in all instances unless prohibited by the funding source for the Contract.

- 13. Excise Tax Requirements.** The City of Sacramento is exempt from the payment of Federal Excise Tax. An exemption certificate will be submitted to Contractor upon request. If Federal Excise Tax is applicable to the transaction, it must be so stated and excluded from the price.

- 14. Tax Payments.** Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of the payment upon request. Contractor hereby agrees to indemnify City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section.

Attachment 5 to 2024-01809

PRICING

Pricing during the term of this agreement will be applied as follows:

- a.) Contract Items - Prices for contract items below are to be firm for the first year of the contract. After that period, prices for contract items may be renegotiated and revisions made to the list of items comprising the contract items, if agreed to by both parties. Written documentation from the manufacturer shall be submitted to the City prior to consideration of any price increase.
- b.) Catalog Items - For items normally carried in inventory by the Contractor, but not specifically identified as contract items, the City is to receive discounts equal to or greater than the most favorable discount offered to other customers by the Contractor.
- c.) Special Orders - For items not identified as contract items and non-catalog (non-inventory) items, quotations may be solicited as deemed appropriate by the City on a case-by-case basis.

| Product Name | EPA Code | Container size | Sales Unit | Price/unit |
|---|-----------------|-----------------------|-------------------|-------------------|
| Capstone MCP | 62719-572 | 2.5 gallon Jug | 2/case | \$ 300.00 |
| Cheetah Pro Herbicide T&O | 228-743 | 2.5 gallon Jug | 2/case | \$ 271.82 |
| Cheetah Pro Herbicide T&O | 228-743 | 2.5 gallon Jug | Jug | \$ 135.91 |
| Clearcast Aquatic Herbicide | 241-437 | Gallon Jug | Gallon | \$ 296.43 |
| Citrine Ultra | 8959-53 | 2.5 gallon Jug | 2/case | \$ 372.26 |
| Esplanade 200SC Agency | 432-1516 | 2.5 gallon Jug | 2/case | \$ 7,545.60 |
| Fertilizer 15-15-15 TS Pro NPK (Marion) | N/A | 50 lb. bag | Bag | \$ 29.83 |
| Fertilizer 31-03-05 5% TPT 1800 (Marion) | N/A | 50 lb. bag | Bag | \$ 35.56 |
| Glove Green Nitrile 13 in. 15 mil Size 10 | N/A | 12 / box | Box | \$ 31.67 |
| Imicide HP (1000ml) | 7945-25 | Liter bottle | 4/case | \$ 1,590.68 |
| Milestone Specialty MCP | 62719-519 | 2.5 gallon Jug | 2/case | \$ 1,645.00 |
| Pendulum AquaCap (BASF) | 241-416 | 2.5 gallon Jug | 2/case | \$ 260.00 |
| Ranger Pro Herbicide | N/A | 30 gallon | Drum | \$ 499.47 |
| Roundup Custom T&O | 524-343 | 2.5 gallon Jug | 2/case | \$ 144.00 |
| Roundup Pro Conc T&O | 542-529 | 30 gallon | Drum | \$ 725.90 |
| Roundup Pro Max T&O | 524-579 | 2.5 gallon Jug | 2/case | \$ 156.00 |
| Rozol Ground Squirrel Bait | 7173-305 | 50 lb. bag | Bag | \$ 139.56 |
| Target Pro Spreader Activator | CA REG 48813 | Gallon Jug | 4/case | \$ 170.44 |
| Telar XP Herbicide | 432-1561 | 8 oz bottle | 8/case | \$ 1,426.72 |

EXHIBIT C

INSURANCE

1. **Insurance Requirements.** During the entire term of this Contract, Contractor shall maintain the insurance coverage described in the Insurance Terms below. Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified under this Contract. No additional compensation will be provided for Contractor's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the City.

Contractor's liability to the City is not in any way limited to or affected by the amount of insurance coverage required or carried by the Contractor in connection with this Contract.

2. **General Liability Minimum Scope and Limits of Insurance Coverage.** Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of the Contractor and subcontractors, products and completed operations of Contractor and subcontractors, and premises owned, leased, or used by Contractor and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of Contractor and subcontractors; products and completed operations of Contractor and subcontractors; and premises owned, leased, or used by Contractor and subcontractors.

3. **Automobile Liability Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

 X Automobile Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

 No automobile liability insurance is required, and by signing this Contract, Contractor certifies as follows:

“Contractor certifies that a motor vehicle will not be used in the performance of any work or services under this agreement. If, however, Contractor does transport items under this Contract, or this Contract is amended to require any employees of Contractor to use a

vehicle to perform services under the Contract, Contractor understands that it must maintain and provide evidence of Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.”

4. **Excess Insurance.** The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage, provided that any umbrella or excess insurance contains, or is endorsed to contain, a provision that it will apply on a primary basis for the benefit of the City, and any insurance or self-insurance maintained by City, its officials, employees, or volunteers will be in excess of Contractor's umbrella or excess coverage and will not contribute to it.
5. **Workers' Compensation Minimum Scope and Limits of Insurance Coverage.** (*Check the applicable provision.*)

Workers' Compensation Insurance is required with statutory limits and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the City.

No work or services will be performed on or at CITY facilities or CITY Property, therefore a Workers' Compensation waiver of subrogation in favor of the CITY is not required.

No Workers' Compensation insurance is required, and by signing this Contract, Contractor certifies as follows:

“Contractor certifies that its business has no employees, and that it does not employ anyone, and is therefore exempt from the legal requirements to provide Workers' Compensation insurance. If, however, Contractor hires any employee during the term of this Contract, Contractor understands that Workers' Compensation with statutory limits and Employer's Liability Insurance with a limit of not less than one million dollars (\$1,000,000) is required. The Workers' Compensation policy will include a waiver of subrogation in favor of the City.”

6. **Other Insurance Provisions.** The policies must contain, or be endorsed to contain, the following provisions:
- A. Contractor's insurance coverage, including excess insurance, shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers will be in excess of Contractor's insurance and will not contribute with it.
 - B. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City, its officials, employees or volunteers.
 - C. Coverage shall state that Contractor's insurance applies separately to each insured

against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Contractor shall provide the City with 30 days written notice of cancellation or material change in the policy language or terms.

7. Acceptability of Insurance. Insurance must be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Exhibit C must be declared to and approved by the City in writing before execution of this Contract.

8. Verification of Coverage.

A. Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. Certificates of insurance must be signed by an authorized representative of the insurance carrier. Copies of policies shall be delivered to the City Representative on demand.

B. Contractor shall send all insurance certificates and endorsements, including policy renewals, during the term of this Contract directly to:

City of Sacramento
c/o Exigis LLC
PO Box 947
Murrieta, CA 92564

C. Certificate Holder must be listed as:

City of Sacramento
c/o Exigis LLC
PO Box 947
Murrieta, CA 92564

D. The City may withdraw its offer of Contract or cancel this Contract if the certificates of insurance and endorsements required have not been provided before execution of this Contract. The City may withhold payments to Contractor and/or cancel the Contract if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

9. Subcontractor Insurance Coverage. Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Exhibit C.

EXHIBIT D

GENERAL CONDITIONS

1. Independent Contractor.

- A. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel will be entitled to any benefits payable to City employees. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Contract, and Contractor will be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance under this Contract.

- B. It is further understood and agreed by the parties that Contractor, in the performance of its obligations, is subject to the City's control and direction as to the designation of tasks to be performed and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by Contractor for accomplishing the results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Contract, this use will be at the Contractor's sole discretion based on the Contractor's determination that the use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Contract. As used in this Contract, "sole discretion" or "sole judgment" means that the party authorized to exercise its discretion or judgment may do so based on an unfettered assessment of its own interests, without considering how its decision affects the other party, and unconstrained by the implied covenant of good faith and fair dealing.

- C. If, in the performance of this Contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under the direction, supervision, and control of Contractor. Except as otherwise provided in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor will issue W-2 or 1099 Forms for income and employment tax purposes for all Contractor's assigned personnel and subcontractors.

- D. The provisions of this section will survive any expiration or termination of this Contract. Nothing in this Contract creates an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by any additional persons or companies so long as Contractor does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** Contractor represents and warrants that Contractor has, and shall maintain at all times during the term of this Contract at its sole cost and expense, all licenses, permits, qualifications, and approvals of any nature that are legally required for Contractor to practice its profession or fulfill the terms of this Contract, including a City Business Operations Tax Certificate and any required certification issued by the California Secretary of State.
3. **Time.** Time is off the essence in the performance of this Contract. Contractor shall devote the necessary time and effort to its performance under this Contract. Neither party will be considered in default of this Contract, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **Contractor Not Agent.** Except as City may specify in writing, Contractor and Contractor's personnel have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.
5. **Conflicts of Interest.** Contractor covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the City's interests or that would in any way hinder Contractor's performance under this Contract. Contractor further covenants that in the performance of this Contract, no person having any such interest will be employed by it as an officer, employee, agent or subcontractor, without the City's written consent.

Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the City's interests during the performance of this Contract. If Contractor is or employs a former officer or employee of the City, Contractor and any former City officer or employee shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any City department, board, commission, or committee.

6. **Hazardous Substances.** "Hazardous Substances" means any substance, material, waste, or other pollutant or contaminant that is or becomes designated, classified, or regulated as hazardous or toxic under any law, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. If Contractor is shipping Hazardous Substances, Contractor must supply a Safety Data Sheet ("SDS") with the first shipment of Hazardous Substances to each City location receiving the Hazardous Substances. If the content of an SDS is revised, Contractor must provide a revised SDS to each City location receiving Hazardous Substances.
7. **Confidentiality of City Information.** During performance of this Contract, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City.

Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or

communicate in any manner any City Information to any third party without the City's prior written consent.

In addition, Contractor must comply with all City policies governing the use of the City network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by Contractor of this section is a material violation of this Contract and shall justify legal and equitable relief.

8. Contractor Information.

- A. City shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor under this Contract. In this Contract, the term "information" means and includes: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.
- B. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor under this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten days after City is served with any such claim, action, lawsuit or other proceeding. However, City's failure to provide notice within the ten-day period does not relieve Contractor of its obligations hereunder, which survive any termination or expiration of this Contract.
- C. All proprietary and other information received from Contractor by City, whether received in connection with Contractor's proposal to City or in connection with Contractor's performance, will be disclosed upon receipt of a request for disclosure, in accordance with the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Contractor of any request for the disclosure of such information. The Contractor will then have five days from the date it receives notice to petition the court for a protective order to prevent the disclosure of the information. The Contractor shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by Contractor to respond to the notice provided by City and seek a protective order, in accordance with the provisions of subsection C, above, constitutes a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and the information will be disclosed by CITY in accordance with the Public Records Act.

9. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business, including a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, name change, or loss of key personnel, it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition that may jeopardize the scheduled delivery or fulfillment of Contractor's obligations to the City under this Contract.
10. **Standard of Performance.** Contractor shall perform in the manner and according to the standards currently observed by a competent practitioner of Contractor's profession in California and in compliance with all requirements of this Contract. All products that Contractor delivers to City under this Contract must be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's profession.

Contractor shall assign only competent personnel to perform on its behalf under this Contract. Contractor must notify the City in writing of any changes in Contractor's staff assigned to perform under this Contract, before any performance by the new staff member. If the City, in its sole discretion, determines that any person assigned by the Contractor to perform under this Contract is not performing in accordance with the standards required herein, City shall provide notice to Contractor. Contractor shall immediately remove the assigned person upon receipt of the notice.

11. **Performance or Different Terms and Conditions.** The City's subsequent performance will not be construed as either acceptance of additional or different terms and conditions or a counteroffer by the Contractor, nor will the City's subsequent performance be viewed as acceptance of any provision of the Uniform Commercial Code, as adopted by any State, that is contrary to the terms and conditions contained herein. Contractor's performance shall conform to the applicable requirements of the Sacramento City Charter, Sacramento City Code, and all applicable State and Federal laws, and all the requirements of this Contract. The California Commercial Code will apply except as otherwise provided in the Contract.
12. **Emergency/Declared Disaster Requirements.** If an emergency is declared by the City Manager, or if any portion of the City is declared a disaster area by the county, state or federal government, this Contract may be subjected to increased usage. The Contractor shall serve the City during a declared emergency or disaster, subject to the same terms and conditions that apply during non-emergency / non-disaster conditions. The pricing set forth in this Contract will apply, without mark-up, regardless of the circumstances. If the Contractor is unable to fulfill the terms of the Contract because of a disruption in its chain of supply or service, then the Contractor shall provide proof of the disruption. Acceptable forms of proof will include a letter or notice from the Contractor's source stating the reason for the disruption
13. **Term; Suspension; Termination.**
- A. This Contract is effective on the Effective Date and continues in effect until both parties have fully performed their respective obligations under this Contract, unless sooner terminated as provided herein.
 - B. City shall have the right at any time to suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. Upon receipt of

such notice, Contractor shall immediately suspend its activities under this Contract, as specified in the notice.

C. The City shall have the right to terminate this Contract at any time by giving a written notice of termination to Contractor. Upon receipt of such notice, Contractor shall immediately cease performance under this Contract as specified in the notice. If the City terminates this Contract:

(1) Contractor shall, not later than five days after receipt of the notice, deliver all information prepared under this Contract to the City.

(2) The City shall pay Contractor the reasonable value of Goods or Services provided by Contractor before termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by Contractor had the Contract not been terminated or had Contractor completed performance required by this Contract. Contractor shall furnish to the City any financial information requested by the City to determine the reasonable value of the Goods or Services provided by Contractor. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.

14. Default by Contractor. In case of default by the Contractor, the City reserves the right to procure the Goods or Services from other sources and deduct from any monies due, or that may thereafter become due to the Contractor, the difference between the price named in this Contract and the actual cost to the City to procure from an alternate source. Prices paid by the City will be considered the prevailing market price at the time such purchase is made.

15. Guarantee and Warranty. Contractor assumes design responsibility and warrants the articles to be free from design defect and suitable for the purposes intended by City. If it is determined by the City that the Goods and Services do not meet the minimum requirements of this Contract, the Contractor shall correct the same at Contractor's sole expense.

A. The Contractor agrees that the Goods and Services furnished under this Contract will be covered by the industry standard or better warranty.

B. Contractor further warrants that the Goods and Services furnished under this Contract will be covered by the most favorable commercial warranties the Contractor gives to any customer for the Goods and Services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City at law or equity, or by any other clause of this Contract.

C. Any additional warranties provided by law, including the warranty of merchantability and warranty of fitness for a particular purpose will remain in full force and effect and inure to the City's benefit. City reserves all rights and remedies provided by law for breach of any applicable warranty related to the Goods and Services.

D. City's inspections, approval, acceptance, or payment for all or part of any Goods and

Services will in no way affect City's warranty rights.

16. Indemnity.

- A. Indemnity: Contractor shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the work or services performed under this Contract, including, any fees and costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including Liabilities for personal injury or death, damage to personal, real or intellectual property, damage to the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Contract by Contractor, any subcontractor (including lower-tier subcontractors) or agent of Contractor, their respective officers and employees, and anyone else for whose acts or omissions any of them may be liable, whether or not the Liabilities (1) are caused in part by a party indemnified hereunder, or (ii) are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense, to the extent arising from the active negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the supervision and control of Contractor or any subcontractor (including lower-tier subcontractors) or agent of Contractor.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by City of any of the insurance policies or coverages described in this Contract does not affect or limit any of City's rights under this section, nor do the limits of any insurance limit the liability of Contractor hereunder. This section will not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of section 8.B., above.
- C. Survival. The provisions of this section will survive any expiration or termination of this Contract.

17. Funding Availability.

- A. This Contract is subject to the budget and fiscal provisions of the Charter and the Sacramento City Code.
- B. The City's payment obligation under this Contract will not exceed the amount of funds appropriated and approved for this Contract by the Sacramento City Council.
- C. This Section shall govern over any other contrary provision of the Contract.

18. Equal Employment Opportunity. During the performance of this Contract, Contractor, for itself, its assignees and successors in interest, agrees as follows:

- A. **Compliance With Regulations:** Contractor shall comply with all state, local, and federal anti-discrimination laws and regulations, including the Executive Order 11246 entitled “Equal Opportunity in Federal Employment”, as amended by Executive Order 11375, 12086, and 13672, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), referred to collectively as the “Regulations.”
- B. **Nondiscrimination:** Contractor, with regards to the work performed by it after award and before completion of the work under this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor’s obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. **Information and Reports:** Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with the Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of noncompliance by Contractor with the nondiscrimination provisions of this Contract, the City shall impose any sanctions it determines are appropriate including:
- (1) Withholding of payments to Contractor under this Contract until Contractor complies;
 - (2) Cancellation, termination, or suspension of this Contract, in whole or in part.
- F. **Incorporation of Provisions:** Contractor shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. The City may direct Contractor to take specific actions to enforce these provisions, including sanctions for noncompliance; provided, however, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request that the City join such litigation to protect the City’s interests.

- 19. Entire Agreement.** This Contract, including all Exhibits and documents referenced herein, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had before the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code.
- 20. Modification of Contract.** The Contractor shall take no direction from any City employee that changes the executed terms and conditions of the Contract, including Exhibit A, or any change that impacts the cost, price, or schedule, before receiving a written, signed modification to the Contract.
- 21. Severability.** If a court with jurisdiction rules that any portion of this Contract or its application to any person or circumstance is invalid or unenforceable, the remainder of this Contract will not be affected thereby and will remain valid and enforceable as written, to the greatest extent permitted by law.
- 22. Waiver.** Neither the City's acceptance of, or payment for, any Goods or Services, nor any waiver by either party of any default, breach or condition precedent, will be construed as a waiver of any provision of this Contract, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver will be effective unless it is in writing and signed by the waiving party.
- 23. Governing Law.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of California, except that the rule of interpretation in California Civil Code section 1654 will not apply. Venue of any litigation arising out of this Contract will lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- 24. Assignment Prohibited.** The expertise and experience of Contractor are material considerations for this Contract. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on Contractor under this Agreement. In recognition of this interest, Contractor shall not assign any right or obligation pursuant to this Contract without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
- 25. Binding Effect.** This Contract is binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 24, above.
- 26. Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished under the Contract, including the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

27. Debarment Certification


- A. Pursuant to 2 CFR, Part 200, and applicable Executive Orders, the City is restricted in its ability to contract with certain parties that are debarred, suspended, or otherwise excluded or ineligible for participating in Federal assistance programs or activities. By signing this Agreement, CONTRACTOR warrants and certifies under penalty of perjury under the laws of the State of California that Contractor, including any owner, partner, director, officer, or principal of the CONTRACTOR, or any person in a position with management responsibility or responsibility for the administration of federal funds:
- (1) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
 - (2) Has not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or other criminal felony;
 - (3) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
 - (4) Has not, within a three-year period preceding this certification, had one or more public contracts (federal, state, or local) or transactions terminated for cause or default.
 - (5) Has not been notified, within a three-year period preceding this certification, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied. Federal taxes are considered delinquent if the tax liability has been finally determined and the taxpayer is delinquent in making payment, as defined in Section 52.209-5 of the Federal Acquisition Regulations.
- B. CONTRACTOR further warrants and certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency. Any exceptions to the warranties and certifications in this Section must be disclosed to the City.
- C. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor's responsibility. Disclosures must indicate to whom exceptions apply, the initiating agency, and dates of action.
- D. City will review the Federal Government's System for Award Management Exclusions maintained by the General Services Administration for eligibility, prior to the execution of this Agreement. The CONTRACTOR shall provide immediate written notice to the City if, at any time prior to execution, the CONTRACTOR learns this certification is erroneous or has become erroneous by reason of changed circumstances. If it is later determined that the Contractor's warranties and certification in this Section were erroneous, the City may terminate this Agreement for default.

SIGNATURES

The parties have signed this Contract, effective as of the day and year first stated above.

CONTRACTOR

Under penalty of perjury, I certify that the information provided here is correct.

Signature: 

Title: VP RTX Distribution (dba Target Specialty Products)

Additional Signature (if required): Bruce A Gelting
Bruce A Gelting (Oct 29, 2024 11:55 EDT)

Title: Asst. Secretary

CITY OF SACRAMENTO

A Municipal Corporation

APPROVED AS TO FORM:

Signature: 
Ryan Meyerhoff (Oct 29, 2024 11:50 PDT)

Title: Senior Deputy City Attorney

Reviewed By:

Signature:

Title:

Approved By:

Signature:

Title:

Additional Signature (if required):

Title: