

**REQUIREMENTS AGREEMENT**  
**C-21-0758D-05-31**

**THIS AGREEMENT** (the "Agreement") is entered into as of the 31 of May, 2022 by and between **ES OPCO USA LLC DBA VESERIS** ("Seller") and **Hidalgo County** ("Buyer").

**WHEREAS**, Buyer has solicited sealed bids for the supply of its requirements of **“Purchase Of Mosquito Control Chemicals” (on an as needed basis)**, (the "Product") as further described in Exhibit "A", Request for Sealed Bids (RFB) Procurement Packet as attached hereto and incorporated herein by reference for all purposes (the "RFB"), and

**WHEREAS**, Seller has submitted a proposal to supply Buyer's requirements in accordance with the specifications as bid. A copy of which is attached hereto as Exhibit B and is incorporated herein for all purposes (the “Specifications”); and

**WHEREAS**, Buyer has determined that Seller has submitted the lowest and best bid to meet Buyer's requirements for certain of the Products, as herein after described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Buyer agrees to purchase from Seller, and Seller agrees to sell and deliver to Buyer, all of the Products that Buyer may require for use by Buyer in **“Purchase of Mosquito Control Chemicals,”** in the areas of Hidalgo County projects for a period of three (3) year commencing May 31, 2022 and ending May 30, 2025, and may be extended with the County’s sole discretion for an additional two (2) - one (1) year terms under the same rates, terms, and conditions, and it is agreed that the Products will meet the specifications set forth in Exhibit “A” hereto. County reserves the right to continue this bid for an additional sixty (60) day grace period at the end of the contract term for unforeseen delay in award of new bid for next contract term.

2. When Buyer determines that it needs a quantity of the Products to be delivered, it will, according to its Purchasing Policies, complete and submit to Seller a Purchase Order describing the type and quantity of the Products required. The Products are to be delivered by Seller to the location in Hidalgo County specified by Buyer in its Purchase Order.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B". Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

4. Seller represents that it is licensed by the State of Texas and qualified to perform and execute the services provided above. If such license is suspended or revoked, this Contract shall automatically be terminated and Seller shall immediately notify the County Judge of Hidalgo.

5. Seller must comply with all applicable laws and regulations of the State of Texas, and County policies. Notwithstanding the foregoing sentence, Seller represents and maintains that Seller is an independent Contractor and is not an employee of the County, or any agency thereof, and represents and warrants that Seller does not desire or request any fringe benefits

provided to employees of County, and/or any agency of the County.

6. Buyer may terminate this Agreement at any time for any reason or no reason at all upon giving thirty (30) days written notice.

7. General Provisions

a. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

b. **No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

c. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Buyer and Seller, and not otherwise.

d. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

e. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Buyer: Hidalgo County  
Attn: County Judge  
100 E. Cano  
Edinburg, Texas 78539

If to Seller: ES OPCO USA LLC  
DBA Vesperis  
Attn: Keith Haas  
125 N. G Street  
Harlingen, Tx 78550

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time

as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

f. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

g. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

h. **Assignment.** This Agreement shall not be assignable.

i. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

j. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

k. **Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

l. **Insurance.** Seller agrees to provide liability insurance covering all activities, vehicles and persons connected with providing services under this Contract in an amount not less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. Seller shall name Buyer as an additional insured and shall furnish Buyer a certificate issued by the insurer (attached as Exhibit "C") that such insurance is in full force and effect.

m. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court of Buyer does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon sixty (60) days written notice to Seller. Buyer agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903 (Vernon Supp. 1996).

n. **Indemnification: Seller will indemnify and hold Buyer harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Contract, whether such act, omission, or failure was the Seller's or that of any person providing services hereunder through or for the Seller. Upon written notice from the County, the Company will resist and defend at its own expense, and by**

**counsel reasonably satisfactory to County, any such claim or action. The Company will carry proper insurance with the County as an additional named insured.**

o. **Purchasing Ethics.** Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

(1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Buyer, or for any elected official, department head or employee or former elected official, department head or employee of Buyer, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an officer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before any department or agency of Buyer.

(2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Buyer, or any person associated therewith, as an inducement for the award of a subcontract or order.

p. **Immunities.** Nothing in this Agreement is intended to and Buyer does not hereby waive, release or relinquish any right to assert any of the defenses Buyer enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Buyer as to any claim or action of any person, entity, or individual against Buyer.

q. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

r. **Nondiscrimination:** Seller/Contractor/Vendor, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement.

s. **Required Contract Provision for Contracts Subject to Federal Award (if applicable):** Pursuant to 2 CFR 200.327, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards. Additionally, County contracts under Federal awards which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required

contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

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**EXECUTED** as of the day and year first written above.

**APPROVED BY COMMISSIONERS' COURT ON** Month 00, 2022.

**Agenda Item No.**

**Executive Office:** \_\_\_\_\_

**VENDOR:**

ES OPCO USA LLC DBA VESERIS

**COUNTY:**

COUNTY OF HIDALGO

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Hon. Richard F. Cortez, County Judge

**APPROVED AS TO FORM**

Office of the Criminal District Attorney,  
Ricardo Rodriguez, Jr.

**ATTEST:**

\_\_\_\_\_  
Amanda D. Austin, Assistant District Attorney

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

**ATTACHMENTS:**

(If Applicable)

**SUPPLEMENTAL SIGNATURES:**

(If Applicable)