

AGENDA
ITEM

20



CITY COUNCIL AGENDA STAFF REPORT

DATE: January 21, 2026

TO: Mayor and City Council

APPROVED BY: Benjamin Martinez, City Manager *Bm*

PREPARED BY: Benjamin Martinez, City Manager *Bm*

SUBJECT: Adopt Resolution No. 2026-__ approving a Professional Services Agreement with Mitchell A. Driskill to provide as needed Legal Services to the City of Calexico

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Recommendation:

Staff recommends that the City Council adopt a Resolution of the City Council of the City of Calexico approving a Professional Services Agreement with Mitchell A. Driskill for providing as needed legal services to the City of Calexico, subject to any non-substantive changes as is necessary by the City Manager.

Background:

The City Council has been in the process of selecting a permanent City Attorney and other general legal services. Mr. Mitchell A. Driskill is a shareholder with Walker & Driskill, PLC. Mr. Driskill is a member of the labor section of the California Bar Association and an associate member of the American Trial Lawyers Association. He received his JD degree from the University of San Diego School of Law, where he also received a certificate in International Business Transactions (London, England) and International Trade (Moscow, Russia). Mr. Driskill graduated from Cornell College where he earned a BA degree in Philosophy and Economics. If approved, Mr. Driskill will assist the City's permanent City Attorney to provide as needed legal services to the City of Calexico.

Discussion and Analysis:

The final Professional Services Agreement contains the following terms:

- Provides for an hourly rate for Attorney at \$250.
- Provides for an hourly rate for Paralegals at \$100.
- Provides for an hourly rate for Law Clerk at \$125.
- Provides for a two (2) year term commencing January 21, 2026 and ending January 20, 2028.

Best Best & Krieger, LLC, will continue to provide legal consulting services, as needed, during this transitional period.

Fiscal Impact:

The City will pay Mr. Mitch Driskill an hourly rate of \$250 for Attorney, \$100 for Paralegals and \$125 for Law Clerk.

Alternatives:

Provide alternative direction to staff.

Coordinated With:

City Manager

Attachment(s):

Resolution of the City Council of the City of Calexico approving a Professional Services Agreement with Mitchell A. Driskill to provide as needed Legal Services to the City of Calexico.

PSA with Mitch A. Driskill to provide as needed Legal Services to the City of Calexico.

ATTACHMENT NO. 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, APPROVING AN PROFESSIONAL SERVICES AGREEMENT WITH MITCHELL A. DRISKILL TO PROVIDE AS NEEDED LEGAL SERVICES TO THE CITY OF CALEXICO

WHEREAS, the City of Calexico is a general law city that operates with a City Council-appointed City Attorney; and

WHEREAS, under the general law city form of government, the City Council acts as the board of directors and sets policy for the City, while City Attorney serves as the chief legal counsel of the organization and carries out all legal matters of the governing body; and

WHEREAS, the City Council wishes to enter into an employment agreement with Mitchell A. Driskill to provide as needed Legal Services to the City of Calexico; and

NOW THEREFORE, BE IT RESOLVED be it resolved, determined, and ordered by the City Council of the City of Calexico:

Section 1. The City Council hereby approves an Professional Services Agreement between the City of Calexico and Mitchell A. Driskill to provide as needed Legal Services, attached as Exhibit "A" to this resolution.

Section 2. This resolution shall become effective immediately upon passage.

PASSED, APPROVED AND ADOPTED this 21st day of January, 2026, by the City Council of the City of Calexico.

Victor Legaspi, Mayor
City of Calexico

ATTEST:

Veronica Luna, City Clerk
City of Calexico

APPROVED AS TO FORM:

Henry G. Castillo, City Attorney
City of Calexico

ATTACHMENT NO. 2

CITY OF CALEXICO
PROFESSIONAL SERVICES AGREEMENT FOR PROVIDING AS NEEDED LEGAL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ (the "Effective Date"), by and between the City of Calexico, a general law municipal corporation organized under the laws of the State of California ("City"), and **Mitchell A. Driskill** sometimes individually referred to herein as "Party".

2. RECITALS.

2.1 Mitchell A. Driskill

Mitchell A. Driskill desires to provide legal services required by City on the terms and conditions set forth in this Agreement. Mitchell A. Driskill represents that he is experienced in providing legal services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project

City desires to engage Mitchell A. Driskill to render as needed legal services as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Mitchell A. Driskill promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply professional legal services to City ("Services"). The Services are more particularly described in Section 3.3 below. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be for a period of two (2) Years from the Effective Date, unless earlier terminated as provided in this Agreement. Mitchell A. Driskill shall complete the Services within the terms of this Agreement, and shall meet any other established scheduled and deadlines.

3.2 Responsibilities of Mitchell A. Driskill.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Mitchell A. Driskill or under its supervision. Mitchell A. Driskill will determine the mean, methods and details of performing the Services subject to the Requirements of this Agreement. City retains Mitchell A. Driskill on an independent contractor basis and not as an employee. Mitchell A. Driskill retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Mitchell A. Driskill shall also not be employees of City and shall at all times be under Mitchell A. Driskill exclusive direction and control. Mitchell A. Driskill shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Mitchell A. Driskill shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance,

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disability insurance, and workers' compensation insurance.

- 3.2.2 Schedule of Services. Mitchell A. Driskill shall perform the Services expeditiously, within the term of this Agreement described in Section 3.1.2 above. Mitchell A. Driskill represents that it has the professional and technical personnel required to perform the Services in accordance with such conditions.
- 3.2.3 Conformance to Applicable Requirements. All work prepared by Mitchell A. Driskill shall be subject to the approval of City.
- 3.2.4 Substitution of Key Personnel. Mitchell A. Driskill has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Mitchell A. Driskill may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Mitchell A. Driskill cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Mitchell A. Driskill at the request of the City.
- 3.2.5 City's Representative. The City hereby designates its City Manager, or his/her designee, to act as its representative for implementation of this Agreement ("City's Representative").
- 3.2.6 Mitchell A. Driskill Representative. Mitchell A. Driskill, or his designee, to act as its representative for the performance of this Agreement. Mitchell A. Driskill Representative shall have full authority to represent and act on behalf of Mitchell A. Driskill for all purposes under this Agreement. Mitchell A. Driskill Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.
- 3.2.7 Coordination of Services. Mitchell A. Driskill agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.
- 3.2.8 Standard of Care; Performance of Employees. Mitchell A. Driskill shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Mitchell A. Driskill represents and maintains that it is skilled in the professional calling necessary to perform the Services. Mitchell A. Driskill warrants that all employees and sub-consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Mitchell A. Driskill represents that it, its employees and sub-consultants have all licenses and permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Mitchell A. Driskill shall perform, as its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by Mitchell A. Driskill's failure to comply with the standard of care provided for herein. Any employee of Mitchell A. Driskill or it's sub-consultants

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who is determined by the City Council to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by Mitchell A. Driskill and shall not be re-employed to perform any of the Services.

3.2.9 Laws and Regulations. Mitchell A. Driskill shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Mitchell A. Driskill shall be liable for all violations of such laws and regulations in connection with Services. If Mitchell A. Driskill performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Mitchell A. Driskill shall be solely responsible for all costs arising therefrom. Mitchell A. Driskill shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Mitchell A. Driskill shall not commence work under this Agreement until it has provided evidence satisfactory to City that it has secured all insurance required under this section. In addition, Mitchell A. Driskill shall not allow any sub-consultants to commence work until it has provided evidence satisfactory to City that the sub-consultant has secured all insurance required under this section or that City's Representative has determined that the insurance described herein is inappropriate to the sub-consultant's scope of work.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, Mitchell A. Driskill shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Mitchell A. Driskill agrees to amend, supplement or endorse the policies to do so.

- (a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 each accident.
- (b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) Professional Liability: Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement.
- (d) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury disease.

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- 3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.
- 3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primarily and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.
- 3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Mitchell A. Driskill from waiving the right of subrogation prior to a loss. Mitchell A. Driskill shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.
- 3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by City and shall protect and be indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.
- 3.2.10.7 Evidence of Insurance. Mitchell A. Driskill concurrently with the execution of this Agreement, and as a condition precedent to the effectiveness thereof shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with City. If such coverage is cancelled or reduced, Mitchell A. Driskill shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.
- 3.2.10.8 Failure to Maintain Coverage. Mitchell A. Driskill agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to City. City shall have the right to withhold any payment due Mitchell A. Driskill until Mitchell A. Driskill has fully complied with the insurance for failure to maintain required insurance coverage, Mitchell A. Driskill shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.
- 3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.
- 3.2.10.10 Insurance for Sub-consultants. All sub-consultants shall be included as additional insureds under Mitchell A. Driskill policies, or Mitchell A. Driskill shall be responsible for causing sub-consultants to purchase the appropriate insurance in

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compliance with the terms of these Insurance Requirements, including adding City as an Additional Insured to the sub-consultant's policies, unless the City's Representative determines that the insurance described herein is inappropriate to the sub-consultant's scope of work.

- 3.2.10.11 Safety. Mitchell A. Driskill shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Mitchell A. Driskill shall at all times be in compliance with all applicable local, state, and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Fees and Payments

- 3.3.1 General Counsel Legal Services. General Counsel legal services include any office hours, city council meetings, preparing ordinances, resolutions, and agenda reports, and providing legal advice on municipal matters such as the Brown Act, Public Records Act, general employment and land use matters. The rates are \$250 per hour for Attorneys, \$100 per hour for Paralegals and \$125 per hour for Law Clerks.

More specifically, the General Counsel legal services include the following services:

- Represent and advise the City Council and all City officers in all matters of law pertaining to their office. Give advice or opinion on the legality of all matters under consideration by the City Council or by any boards and commissions or officers of the City.
- Act as legal counsel to agencies the City Council serves as governing body to, including, but not limited to, the Calexico Redevelopment Successor Agency, Calexico Financing Authority and other affiliated entities.
- Attend and represent the City's legal interest at all City Council meetings (including Closed Sessions and Council Workshops), and other meetings on an as needed basis specified by the City.
- Provide legal opinions, advice, assistance, and consultation to the City Council, City Manager, and City staff related to municipal law issues, including, but not limited to, the Brown Act, the Public Records Act, election law, contracts and franchises, and pending and current state and federal legislation and court decisions.
- Review, approved, and/or prepare ordinances, resolutions, staff reports, contracts, deeds, leases, and other legal documents required by the City.
- Prepare legal opinion for City departments, the City Council, boards and commissions.
- Oversee services provided by outside legal specialists engaged by the City for special legal problems.
- Coordinate legal activities with other City departments, divisions, and outside agencies.
- Provide written updates to new state or federal legislation or judicial decisions and suggest action or procedures to ensure compliance.
- Perform such other legal duties as may be required by the City Council as may be necessary to complete the performance of the functions mentioned above.

- 3.3.2 Special Counsel Services. Special Legal Services shall include the following types of services, in the event such issues arise: litigation, complex labor and employment, complex public policy and ethics, public retirement systems, non-routine advice on taxes, assessments, fees, Proposition 218 and other financial matters, non-routine

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environmental law, water law, non-routine real estate services, telecommunications, and other matters mutually agreed upon. The rates are \$250 per hour for Attorneys, \$100 per hour for Paralegals and \$125 per hour for Law Clerks.

Special Counsel work would include the following work:

- Provide legal opinions, advice, assistance, and consultation to the City Council, City Manager, and City staff related to non-routine municipal law issues, including but not limited to real estate and property transactions, land use, environmental law/CEQA, public improvements/capital projects, code enforcement, tort liability and risk management, fees, taxes, assessments, Proposition 218, former Redevelopment Agency dissolution, refuse, recycling, green waste rates and other matters as directed.
- Prepare cases for trial and the investigation of claims or complaints by or against the City.
- Approve the form of all contracts made by and between the City of Calexico and all bonds given to the City, endorsing same.
- Complex litigation and other legal matters relating to water, the Voting Rights Act and districting, Zoning Code, development and Industrial Specific Plan matters, land use and infrastructure, RDA issues ad transfers, personnel and employment issues, recycling and green initiatives, Proposition 218 and Proposition 26 matters, medical marijuana, finance and revenue-sharing.

- 3.3.3 Third Party Reimbursables. Legal services for which the City receives reimbursement from a Developer or other Third Party would be billed at Mitchell A. Driskill's current published standard private rates, less ten percent (10%).
- 3.3.4 Public Financing. Public Financing will be provided at rates set by amendment to this Agreement.
- 3.3.5 Cost of Living Adjustments. On October 1 of each year during the term of this Agreement, Mitchell A. Driskill's hourly rate shall be adjusted for the change in the cost of living for the twelve (12) month period published in August, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Diego area. However, such adjustment shall never be lower than zero percent (0%), nor more than four percent (4%) .
- 3.3.6 Reimbursement. City shall reimburse Mitchell A. Driskill for actual costs advanced on behalf of City in addition to the amount billed for legal fees. These costs include travel on behalf of City, automobile mileage at the current approved IRS rate, actual expenses away from Mitchell A. Driskill offices while on City business, long-distance telephone calls, copying and other expenses incurred on City's behalf.
- 3.3.7 Payment of Compensation. Mitchell A. Driskill shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Mitchell A. Driskill. The statement which indicates work completed and hours of Services rendered by Mitchell A. Driskill. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay Mitchell A. Driskill the compensation.

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3.4 Accounting Records

3.4.1 Maintenance and Inspection. Mitchell A. Driskill shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Mitchell A. Driskill shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Mitchell A. Driskill shall allow inspection of all work, data, documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. This Agreement and the Services rendered under it may be terminated at any time upon thirty (30) days' prior written notice from either Party, with or without cause. In the event of such termination, Mitchell A. Driskill shall be paid for all Services authorized by City and performed up through and including the effective date of termination.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Mitchell A. Driskill to provide all finished or unfinished Documents and Data and other information of any kind prepared by Mitchell A. Driskill in connection with the performance of Services under this Agreement. Mitchell A. Driskill shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event of this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.1.4 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Mitchell A. Driskill: Address
 City, State Zip Code
 Attn: Mitchell A. Driskill

City: City Hall
 608 Heber Avenue
 Calexico, CA 92231
 Attn: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

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3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents and Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on USB's, which are prepared or caused to be prepared by Mitchell A. Driskill under this Agreement ("Documents and Data"). Mitchell A. Driskill shall require all sub-consultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents and Data the sub-consultant prepares under this Agreement. Mitchell A. Driskill represents and warrants that Mitchell A. Driskill has the legal right to license any and all Documents and Data. Mitchell A. Driskill makes no such representation and warranty in regard to Documents and Data which were prepared by professionals other than Mitchell A. Driskill or provided to Mitchell A. Driskill by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Mitchell A. Driskill in connection with the performance of this Agreement shall be kept confidential by Mitchell A. Driskill. Such materials shall not without the prior written consent of City, be used by Mitchell A. Driskill for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Mitchell A. Driskill which is otherwise known to Mitchell A. Driskill or is generally known, or has become known, to the related industry shall be deemed confidential. Mitchell A. Driskill shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Mitchell A. Driskill shall defend, indemnify, hold City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Mitchell A. Driskill, its officials, officers, employees, agents, subcontractors and sub-consultants arising out of or in connection with the performance of the Services or this Agreement,

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including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Mitchell A. Driskill shall defend, at Mitchell A. Driskill's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Mitchell A. Driskill shall pay and satisfy any judgement, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Mitchell A. Driskill shall reimburse City and its directors, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Mitchell A. Driskill obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors; officials, officers, employees, agents or volunteers.

- 3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.
- 3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Imperial County.
- 3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.
- 3.5.10 Assignment of Transfer. Mitchell A. Driskill shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- 3.5.11 Construction: References: Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Mitchell A. Driskill include all personnel, employees, agents, and sub-consultants of Mitchell A. Driskill, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 3.5.12 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.5.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.5.14 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

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- 3.5.15 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.5.16 Prohibited Interests. Mitchell A. Driskill warrants that he has not employed nor retained any company or person, other than a bona fide employee working solely for Mitchell A. Driskill, to solicit or secure this Agreement. Further, Mitchell A. Driskill warrants that he has not paid nor has he agreed to pay any company or person, other than a bona fide employee working solely for Mitchell A. Driskill, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 3.5.17 Equal Opportunity Employment. Mitchell A. Driskill represents that he is an equal opportunity employer and he shall not discriminate against any sub-consultant, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Mitchell A. Driskill shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.
- 3.5.18 Labor Certification. By its signature hereunder, Mitchell A. Driskill certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.
- 3.5.19 Authority to Enter Agreement. Mitchell A. Driskill has all requisite power and authority to conduct his business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.
- 3.5.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.5.21 Declaration of Political Contributions. Mitchell A. Driskill shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the city council within the previous twelve-month period by Mitchell A. Driskill and all of Mitchell A. Driskill's employees, including any employee(s) that Mitchell A. Driskill intends to assign to perform the Services described in this Agreement.

**CITY OF CALEXICO
PROFESSIONAL SERVICES AGREEMENT FOR PROVIDING AS NEEDED LEGAL SERVICES**

3.6 Subcontracting

Prior Approval Required. Mitchell A. Driskill shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF CALEXICO

MITCHELL A. DRISKILL

By: _____
Victor Legaspi, Mayor

By: _____
Mitchell A. Driskill