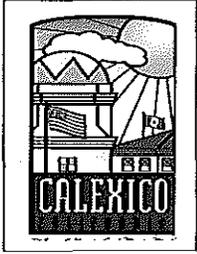


AGENDA
ITEM

15



AGENDA STAFF REPORT

DATE: February 5, 2019

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: David Dale, City Manager

SUBJECT: Approval of Professional Services Agreement with Fire Prevention Services, Inc. for Weed and Rubbish Nuisance Abatement Services

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Recommendation:

Approve a Professional Services Agreement with Fire Prevention Services, Inc. for Weed and Rubbish Nuisance Abatement Services.

Background/Discussion:

The City does not have the necessary resources, both in staff time and funding, to conduct abatement for weed and rubbish problems. Therefore, it is recommended to engage a Consultant to design and implement a comprehensive nuisance abatement program providing weed and rubbish nuisance abatement services. The agreement is free of charge to the City. All costs will be recovered from the property owners per the City Municipal Code.

The term of this Agreement shall be from the date of execution to December 31, 2020. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than five (5) additional one-year terms.

The agreement scope includes all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional weed and rubbish nuisance abatement services. The design and implementation of a comprehensive weed and rubbish nuisance abatement program that will reduce public nuisance, the threat of fire spread, and to enforce the requirements of the City's Municipal Code.

**AGENDA
ITEM**
15

More specifically, the scope of work includes but is not limited to:

- Consultant will visit and thoroughly inspect all parcels in the City which fall under the provisions of this Agreement. Frequency of inspection shall be determined by subsequent agreement between the Consultant and the City. The City may designate high priority areas of the City, upon which the Consultant shall concentrate their efforts until compliance is gained. Any parcels found to be in violation of City standards shall be documented by the Consultant. The Consultant shall perform all subsequent inspections on the parcel, and notifications of the parcel owner until the parcel is in compliance with City standards.
- Consultant will send notice to the owner of any parcel found to be in violation of the City's Municipal Code and City standards. Determination of the owner of any such parcel shall be made from the county assessors last equalized tax roll. The notice shall include the standards the parcel owner is required to meet and the consequences of ignoring the notice and methods of appeal. All notices and letters sent to parcel owners shall be approved as to form by the City. Any parcels owned by the City that are found to be in violation of City standards shall be reported to the City.
- If parcel owners have not abated the hazard by the time specified in the Notice, the parcel will be a candidate for "forced abatement" and cost will be charged to the owner pursuant to the City's Municipal Code. Full documentation of the process used to reach forced abatement shall be provided to the City, including but not limited to, the specific Notice or Notices, and photographs of the condition of the parcel. When such documentation is provided and the City or his/her authorized representative agrees that forced abatement is required, a "Work Order Authorization" shall be submitted by the Consultant and shall be signed by the City or his/her authorized representative. No forced abatement work shall be performed by the Consultant until such authorization has been signed by an authorized member of the City.
- When forced abatement occurs, the Consultant shall maintain all proper documentation of the job. The documentation shall include all required notices, authorizations, and the date the work was performed, charges accrued by the parcel owner for said work, and photographs of the parcel taken before and after the abatement.
- The Consultant will perform all noticing, inspections, and follow-up notifications and inspections for all parcels which fall under the jurisdiction of the City's Municipal Code.
- The consultant shall cooperate fully with the City when forced abatement upon any parcel is imminent. The Consultant shall not proceed with any forced abatement until proper documentation is provided that demonstrates all rules and

regulations have been properly followed, including but not limited to those in the City's Municipal Code and authorization is issued by the City.

- The Consultant shall perform billing and collection functions associated with forced abatements, unless other prior arrangements have been made with the City.
- The Consultant shall be an authorized representative of the City under this program and shall maintain good public relations with all citizens, groups and organizations associated with the Project.

Fiscal Impact:

There is no impact to the City's General Fund. This contract is for Zero Dollars (\$0.00). Consultant shall not be reimbursed for any expenses by the City. All expenses related to the nuisance abatement program will be paid for by parcel owners pursuant to the City's Municipal Code.

Coordinated with:

City Attorney.

Attachments:

1. Proposed Agreement

**CITY OF CALEXICO
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2020, by and between the City of Calexico, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 608 Heber Avenue, Calexico, California 92231 ("City") and Fire Prevention Services Inc., a corporation, with its principal place of business at P.O. Box 1720 El Cajon, California 92011 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing weed and rubbish nuisance abatement 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 Consultant to render such professional services to design and implement a comprehensive nuisance abatement program for the City ("Project") as set forth in this Agreement.

The Project is more particularly described as:

- The design and implementation of a comprehensive weed and rubbish nuisance abatement program that will reduce public nuisance, the threat of fire spread, and enforce the requirements of the City's Municipal Code.
- The Consultant will perform all noticing, inspections, and follow-up notifications and inspections for all parcels which fall under the jurisdiction of the City's Municipal Code.
- Public nuisance abatement shall be performed by the Consultant, when required.
- The Consultant shall cooperate fully with the City when forced abatement upon any parcel is imminent.
- The Consultant shall not proceed with any forced abatement until proper documentation is provided that demonstrates all rules and regulations have been properly followed, including but not limited to those in the City's Municipal Code and authorization is issued by the City.
- The Consultant shall perform billing and collection functions associated with forced abatements, unless other prior arrangements have been made with the City.

- The Consultant shall be an authorized representative of the City under this program and shall maintain good public relations with all citizens, groups and organizations associated with the Project.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant 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 the professional weed and rubbish nuisance abatement services necessary for the Project ("Services"). The Services are more particularly described in Section 2.2 and Exhibit "A" attached hereto and incorporated herein by reference. 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 from the date of execution to December 31, 2020, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than five (5) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.2.1 Phase I Design. Consultant shall complete the design for the Project, as proposed, within ten (10) working days of execution of this Agreement. The final design plans shall be submitted to the City within the ten day period for review by the City. No work shall be performed by the Consultant beyond the Phase 1 stage until the City has provided written Notice to Proceed to Phase II.

3.1.2.2 Phase II Implementation. Consultant shall implement the Project immediately upon receiving a Notice to Proceed from the City. Initial inspections and notices shall be sent to all parcels found in violation of the City's Municipal Code. Subsequent inspections and final notifications shall be performed to verify all parcels comply.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent Consultant basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant 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. Consultant 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, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Section 3.1.2 and as otherwise agreed to by the City and Consultant. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates the City Manager, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.5 Consultant's Representative. Consultant hereby designates Kenny Osborn, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her 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.

3.2.6 Coordination of Services. Consultant 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.

3.2.7 Standard of Care; Performance of Employees. Consultant 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.

3.2.7.1 Safety precautions shall be used in all operations including, but not limited to, spark arrestors on all internal combustion engines, a two and one-half gallon pressurized water fire extinguisher, and round point shovel on all tractors, safety shields on mowers and motorized trimmers, and proper clothing, footwear, gloves, and eye protection for laborers when required. Crew supervisors and equipment operators must be qualified, experienced, and able to communicate in the English language, or have a qualified interpreter present. Equipment, tools and vehicles used by Consultant shall be in good mechanical condition and are subject to inspection and approval by the City prior to acceptance. Operations may be suspended at any time should it be determined that proper safety precautions are not being taken. Precautions shall be taken so that nuisance noise, dust, and waste are not created during abatement.

3.2.7.2 Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, 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 from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.2.9 Laws and Regulations; Employee/Labor Certification. Consultant 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 Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.2.9.1 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.2.9.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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. Consultant 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.

3.2.9.3 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.9.4 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant 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.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

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, the Consultant, in partial performance of its obligations under such Agreement, 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, Consultant 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, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(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), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C)

(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 and disease.

(E) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.2.10.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.2.10.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.10.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers 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. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. 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. 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 the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the 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 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 transact business of insurance 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.

3.2.10.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.10.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.10.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.10.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.2.11 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local,

state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference by the Parcel Owners. The total compensation from the City shall not exceed Zero Dollars (\$0.00) without written approval of the City Council or City Manager as applicable.

3.3.2 Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.3 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.3.4 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.3.5 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.6 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "B" may be adjusted each year at the time of renewal as set forth in Exhibit "B."

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.3 Labor Certification. By its signature hereunder, Consultant certifies that it 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 Accounting Records.

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant 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. Consultant 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.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

3.6.1.3 Additional Services. In the event 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.

3.6.2 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:

Consultant: Fire Prevention Service, Inc.
PO Box 1720
El Cajon, CA 92022
ATTN: Kenny Osborn/President

City: City of Calexico
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.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 Documents & 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 computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.6.3.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.6.3.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.6.3.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant 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 Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant 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.

3.6.3.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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

3.6.5 Indemnification.

3.6.5.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the 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 of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.5.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is

defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.6.6 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.

3.6.7 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Imperial County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.9 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.11 Assignment; Subcontracting. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services 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.

3.6.12 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 Consultant include all personnel, employees, agents, and subconsultants of Consultant, 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.

3.6.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.14 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.

3.6.15 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.16 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.

3.6.17 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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.

3.6.18 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its 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.

3.6.19 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.20 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

[SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE TO

PROFESSIONAL SERVICES AGREEMENT BY AND
BETWEEN THE CITY OF CALEXICO AND FIRE
PREVENTION SERVICES, INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF CALEXICO

FIRE PREVENTION SERVICES, INC.

By: _____
David Dale
City Manager

By: _____
Kenny Osborn
President

Attest:

City Clerk

Approved as to Form:

Best Best & Krieger LLP
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

1.1 SERVICES PROVIDED BY THE CONSULTANT The Services to be provided by the Consultant shall consist of, but not be limited to, the following:

1.1.1 Cooperate fully with the City in performing Services in accordance with this Agreement, with established codes and standards, and with the intent of what the City expects the Consultant to accomplish.

1.1.2 Visit and thoroughly inspect all parcels in the City which fall under the provisions of this Agreement. Frequency of inspection shall be determined by subsequent agreement between the Consultant and the City. The City may designate high priority areas of the City, upon which the Consultant shall concentrate their efforts until compliance is gained. Any parcels found to be in violation of City standards shall be documented by the Consultant. The Consultant shall perform all subsequent inspections on the parcel, and notifications of the parcel owner until the parcel is in compliance with City standards.

1.1.3 Send notice to the owner of any parcel found to be in violation of the City's Municipal Code and City standards. Determination of the owner of any such parcel shall be made from the county assessors last equalized tax roll. The notice shall include the standards the parcel owner is required to meet and the consequences of ignoring the notice and methods of appeal. All notices and letters sent to parcel owners shall be approved as to form by the City. Any parcels owned by the City that are found to be in violation of City standards shall be reported to the City.

1.1.4 If parcel owners have not abated the hazard by the time specified in the Notice, the parcel will be a candidate for "forced abatement" and cost will be charged to the owner pursuant to the City's Municipal Code. Full documentation of the process used to reach forced abatement shall be provided to the City, including but not limited to, the specific Notice or Notices, and photographs of the condition of the parcel. When such documentation is provided and the City or his/her authorized representative agrees that forced abatement is required, a "Work Order Authorization" shall be submitted by the Consultant, and shall be signed by the City or his/her authorized representative. No forced abatement work shall be performed by the Consultant until such authorization has been signed by an authorized member of the City.

1.1.5 When forced abatement occurs, the Consultant shall maintain all proper documentation of the job. The documentation shall include all required notices, authorizations, and the date the work was performed, charges accrued by the parcel owner for said work, and photographs of the parcel taken before and after the abatement.

1.1.6 Furnish all labor, material, equipment, and tools for the inspection, notification, and forced abatement of parcels within City.

1.1.7 Respond within three working days, in writing or by telephone, to all complaints and/or inquiries concerning violations of the Municipal Code. Any complaints about work performed by the Consultant that cannot be resolved by the same shall be directed to the City..

1.1.8 Provide the City with monthly reports containing monthly and year-to-date information concerning the progress of the program. The report shall contain, but not be limited to, the following information:

- A. number of first notices sent
- B. number of final notices sent
- C. number of parcels forcibly abated
- D. number of parcels abated by owner
- E. number of parcels in compliance

An authorized representative of the Consultant shall meet with the City, upon request, to discuss the progress of the Project or any other issues or concerns which may arise during the term of this Agreement.

1.2 SERVICES PROVIDED BY THE CITY The City shall provide the following services:

1.2.1 Overall quality assurance of the Project by providing written and oral standards and guidelines, reviewing correspondence and documentation, and reviewing citizen comments and complaints. The City or an authorized representative shall meet, jointly inspect and authorize all forced abatements.

1.2.2 Field inquiries and complaints and forward the information to the Consultant.

1.2.3 Consultation on issues related to the concerns of the City. Assistance with the enforcement of City ordinances and/or standards will be provided when necessary.

1.2.4 To the extent allowed by law, provide information concerning both public and private parcels in the City which were subject to prior abatement efforts. A list of parcels known or suspected to contain environmentally sensitive habitat will also be provided.

1.2.5 Special Assessments, should Consultant be unable to collect an amount charged for abatement after attempt by Consultant and/or Consultant's collection agency, Consultant may request a special assessment through the City. If allowed by law and the City's Municipal Code, City agrees to impose an assessment after review of Consultant's records, City shall pay Consultant upon payment from the tax collector's office. In order to process an assessment, Consultant shall provide the records required by the City. Any payment by City will require written approval of the City Council or City Manager as applicable.

EXHIBIT "B"
COMPENSATION

To the extent allowed by law and the City's Municipal Code, the Consultant shall bill Parcel Owners that were subjected to forced abatement at not more than the following amounts:

| | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1. | <u>Tractor Mowing</u> | |
| | A. per parcel, sized 1 to 7,500 square feet | \$250.00 |
| | B. per parcel, sized 7,501 to 15,000 square feet | \$325.00 |
| | C. per parcel, sized 15,001 square feet to 30,000 square feet | \$400.00 |
| | D. per parcel, sized 30,001 square feet to one acre | \$450.00 |
| | E. per square foot over one acre | \$ 00.02 |
| 2. | <u>Hand Labor</u> | |
| | A. per square foot of area abated | \$0.10 |
| 3. | <u>Dozer Operation</u> | |
| | A. hourly rate | \$150.00 |
| | B. move-on fee | \$250.00 |
| 4. | <u>Debris Remediation</u> (includes chipping, grinding, and/or shredding) Per cubic yard of material prior to chipping, and/or compacting | |
| | A. per cubic yard | \$38.00 |
| | B. dump fees | (reimbursement of cost) |
| 5. | <u>Administrative Cost</u> | |
| | A. per parcel | \$350.00 |
| 6. | <u>Attorney Services</u> | |
| | A. per parcel, per hour | \$300.00 |
| 7. | <u>Assessment Fees</u> (includes preparing reports, attending hearings, etc.) | |
| | A. Cost confirmation fee, per parcel | \$275.00 |
| 8. | <u>Miscellaneous Fees Per Parcel</u> | |
| | A. special inspection fee | \$50.00 |
| | B. notice of abatement "lien" | \$50.00 |
| | C. interest on notice of abatement "lien" (apr) | \$10% |
| | D. release of notice of abatement "lien" | \$50.00 |
| | E. public notary | \$20.00 |
| | F. file duplication fee | \$50.00 |
| | G. unscheduled Labor per man hour | \$80.00 |
| | H. unscheduled fees | (reimbursement of cost) |
| | I. Posting notice | \$50.00 |
| 9. | <u>Fee to the City</u> | \$ 0 |

The Consultant shall not charge the maximum amount of such fees without prior written consent of the City.