AGENDA
ITEM

14

CITY COUNCIL
AGENDA STAFF REPORT

DATE: October 20, 2021

TO: Mayor and City Council

APPROVED BY: Miguel Figueroa, City Manager

PREPARED BY: Miguel Figueroa, City Manager

SUBJECT: Approve and Authorize the City Manager to Sign the Enclosed Third Amendment to the Professional Services Agreement with AmeriNational Community Services.

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Recommendation

Consideration to approve and authorize the City Manager to sign the enclosed third amendment to the professional services agreement with AmeriNational Community Services.

Background:

On May 17, 2016 the City of Calexico City Council approved a professional services agreement with AmeriNational Community Services to provide loan portfolio services for housing programs offered by the City of Calexico. Loan portfolio services provided by AmeriNational Community Services include but are not limited to, collection and remittance of payments, payment of property taxes, and insurance monitoring.

On February 5, 2020 the City of Calexico City Council approved the first amendment to the professional services agreement with AmeriNational Community Services.

On December 2, 2020 the City of Calexico City Council approved the second amendment to the professional services agreement with AmeriNational Community Services.

Discussion and Analysis

The professional services agreement with AmeriNational Community Services Expires on December 31, 2021. Staff from the City Manager's office and the Finance Department assessed and determined the need to extend the professional services of AmeriNational Community Services considering their flawless service and attention to the city's housing loan portfolio.

AGENDA ITEM 14

Fiscal Impact:

Approximately $17,000 is paid annually by housing program income funds.
There is no impact to the General Fund.

Coordinated With:

Finance Department
City Attorney

Attachment(s):

1. Third Amendment to the Professional Services Agreement between the City of Calexico and AmeriNational Community Services.
2. Second Amendment to the Professional Services Agreement between the City of Calexico and AmeriNational Community Services.
3. First Amendment to the Professional Services Agreement between the City of Calexico and AmeriNational Community Services.
4. Professional Services Agreement between the City of Calexico and AmeriNational Community Services dated May 17, 2016.

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF CALEXICO AND AMERINATIONAL COMMUNITY SERVICES

ARTICLE 1. PARTIES AND DATE

This Third Amendment to the Professional Services Agreement ("Third Amendment") dated as of the 20th day of October 2021 is entered into by and between the City of Calexico ("City") and AmeriNational Community Services ("Consultant").

ARTICLE 2. RECITALS

2.1 City and Consultant entered into that certain Professional Services Agreement dated May 17, 2016 ("Agreement").

2.2 City and Consultant entered into the First Amendment to the Professional Services Agreement on February 5, 2020, that covers the period between May 17, 2016 through December 31, 2020.

2.3 City and Consultant entered into the Second Amendment to the Professional Services Agreement on December 2, 2020, that covers the period January 1, 2021 through December 31, 2021.

2.4 City and Consultant now desire to amend the Second Amendment to the Agreement and extend the Agreement until December 2023 on the same terms and conditions.

ARTICLE 3. TERMS

3.1 Section 2, Time of Performance, is hereby being revised in its entirety as follows:

> "2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such works shall be completed no later than *December 31, 2023*. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City."

3.2 Continuing Effect of Agreement. Except as amended by this Third Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect.

From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

3.3 Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

3.4 Counterparts. This Third Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

EXHIBIT B. FEES

The Deferred Loan servicing fees are hereby revised in its entirety as follows:

All deferred loans will be subject to the following applicable monthly service fee:

i. Warehouse: $2.15 per loan per month

ii. Warehouse and monitor of taxes and/or insurance: $2.75 per loan per month plus a one-time tax service vendor fee.

iii. Warehouse and escrow of taxes and/or insurance: $15.50 per loan per month plus a one-time tax service vendor fee.

iv. Flat fee for receiving occasional payments on deferred loans: $15.50 per payment

[SIGNATURES ON FOLLOWING PAGE]

CITY OF CALEXICO

By: _____
Javier Moreno, Mayor

Date: _____

AMERINATIONAL COMMUNITY SERVICES

By: _____
Its: _____

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

ORIGINAL

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF CALEXICO AND AMERINATIONAL COMMUNITY SERVICES

ARTICLE 1. PARTIES AND DATE

This Second Amendment to the Professional Services Agreement ("Second Amendment") dated as of the 2nd day of December 2020 is entered into by and between the City of Calexico ("City") and AmeriNational Community Services ("Consultant").

ARTICLE 2. RECITALS

2.1 City and Consultant entered into that certain Professional Services Agreement dated May 17, 2016 ("Agreement").

2.2 City and Consultant entered into the First Amendment to the Professional Services Agreement on February 5, 2020, that covers the period between May 17, 2016 through December 31, 2020.

2.3 City and Consultant now desire to amend the First Amendment to the Agreement and extend the Agreement until December 2021 on the same terms and conditions.

ARTICLE 3. TERMS

3.1 Section 2, Time of Performance, is hereby being revised in its entirety as follows:

> "2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such works shall be completed no later than *December 31, 2021*. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City."

3.2 Continuing Effect of Agreement. Except as amended by this Second Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

3.3 Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

3.4 Counterparts. This Second Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

(SIGNATURES ON FOLLOWING PAGE]

CITY OF CALEXICO

By: Rosie Arreola Fernandez
Rosie Arreola-Fernandez, Mayor

Date: 12/16/2020

AMERINATIONAL COMMUNITY SERVICES

By: Daniel Thomsen

Its: CAO

Date: 12-22-2020

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
Carlos Campos, City Attorney

ORIGINAL

FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF CALEXICO AND AMERINATIONAL COMMUNITY SERVICES

ARTICLE 1. PARTIES AND DATE

This First Amendment to the Professional Services Agreement ("First Amendment") dated as of the 5th day of February 2020 is entered into by and between the City of Calexico ("City") and AmeriNational Community Services ("Consultant").

ARTICLE 2. RECITALS

2.1 City and Consultant entered into that certain Professional Services Agreement dated May 17, 2016 ("Agreement").

2.2 City and Consultant now desire to amend the Agreement and extend the Agreement until December 2020 on the same terms and conditions.

2.3 With this First Amendment, the Agreement now covers the period between May 17, 2016 through December 31, 2020.

ARTICLE 3. TERMS

3.1 Section 2, Time of Performance, is hereby being revised in its entirety as follows:

> "2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such works shall be completed no later than *December 31, 2020*. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City."

3.2 Continuing Effect of Agreement. Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

3.3 Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

3.4 **Counterparts.** This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF CALEXICO

By: Bill Hodge
Bill Hodge, Mayor

Date: 2-7-2020

AMERINATIONAL COMMUNITY SERVICES

By: Danielle Thomsen
Its: CFO

Date: 2-25-2020

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger LLP

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the 17th day of May, 2016, by and between the City of Calexico ("City") and AmeriNational Community Services ("Consultant").

RECITALS

A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than *May 18, 2019*. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.

3. Compensation. Compensation to be paid to Consultant shall be as set forth in Exhibit B, which is attached hereto and incorporated herein by reference. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the

property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6 Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant agrees to indemnify, including the cost to defend, the City, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this contract. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence, willful misconduct or defects in design by

the City or its agents, servants, or independent contractors who are directly responsible to the City, or the active negligence of the City.

To the fullest extent permitted by law, the Consultant shall (1) immediately defend and (2) indemnify the City, and its councilmembers, officers, agents, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Consultant's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, agents, and employees, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.

(c) The review, acceptance or approval of the City's work or work product by any indemnified party shall not affect, relieve or reduce the City's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

10. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her

employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars ($1,000,000) combined single limit for each occurrence.

iv. Errors and Omissions Liability. Consultant shall maintain errors and omissions liability insurance for all work performed under this Agreement in an amount of not less than one million dollars ($1,000,000).

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall obtain a City of Calexico Business License.

13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:	City of Calexico, City Manager 608 Heber Ave. Calexico, CA 92231
If to Consultant:	AmeriNational Community Services 8121 E. Florence Ave. Downey, Ca. 90240

15. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

Nick Fenley
Interim City Manager

CONSULTANT:

AmeriNational Community Services

APPROVED AS TO FORM:

Carlos Campos
Interim City Attorney

ATTEST:

Gabriela Garcia
Deputy City Clerk