

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Southwest Fire Defense, LLC (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City and must be a certified Arborist:

A. Furnish tree pruning and removal services conforming to the American National Standards Institute Standard ANSI A300-(Parts 1-10) and Standard Z-133.1-2006 as currently amended.

B. To provide all necessary transportation, supervision, labor, licenses, tools, equipment, services and expertise that apply to pruning and removal of evergreen and deciduous species as directed. It is required of the Contractor to provide the necessary equipment and crews to complete the work within the specified period.

C. Unless specifically directed all pruning shall address structural issues above aesthetics, within long-term health of the plant as the primary objective

D. If necessary, to precut branches that are too heavy to handle to prevent splitting or peeling the bark. Where

necessary to prevent tree or property damage, branches shall be lowered to the ground by proper ropes and equipment.

E. On trees known to be diseased, tools are to be disinfected with methyl alcohol at 70% (denatured wood alcohol diluted appropriately with water) or bleach solution after each cut and between tree where there is known to be a danger of transmitting the disease on tools.

F. Equipment that will damage the bark and cambium layer should not be used on or in the tree. For example, the use of climbing spurs is not an acceptable work practice for tree pruning operations on live trees.

G. Unless otherwise instructed the Contractor shall clean-up the site and remove and dispose of all debris at the end of each day's operation. Site clean-up shall include remove if sawdust, small twigs, chips, leaves, trunks and limbs from the street and parkway with appropriate tools for the job. Stumps shall not be left higher than three (3) inches above the ground level. Aside from the stump left, the site shall be returned to the same state it existed in prior to the removal. Disposal of all logs limbs, chips, and debris generated from by work described within this contract will be the responsibility of the Contractor unless there arrangements have been determined to be in the City's best interest.

H. The Contractor shall take all necessary precautions to eliminate damage to adjacent trees and shrubs, lawns or other real or personal property.

I. Removal / pruning operations may be conducted in area where overhead electric, telephone, and cable television facilities exist. The Contractor shall coordinate all activities with the relevant utility. The Contractor shall make arrangement with the utility company for removal of all necessary limbs and branches which may conflict with or create a hazard in conducting the operations of this contract. The Contractor shall be responsible for all damage due to operations.

J. The Contractor shall refrain from the practice of "free falling" the tree. All Trees shall be limbed out prior to the final cutting of the trunk. Lights, streets and other manmade structures shall always be protected for the impact of falling wood by use of the tree or limb ground supports. Ropes or other mechanical devises shall be used to lower all limbs of sufficient size that may cause damage to the other trees or surroundings public or private property.

K. All work zones will be properly established identified and maintained during any activity tree operation.

L. All infectious diseased or parts of dead trees possibly harboring a vector of infectious diseases or pest shall be removed from the area and shall become the Contractor's

responsibility to ensure destruction of the diseased or dead wood in accordance with the State statutes and local ordinances.

M. The City shall have the responsibility of notifying the Santa Fe Police and Fire departments of lane closures and receive all clearances, post proper signage and supply qualified persons to direct traffic. The Contractor shall be required to contact the appropriate State or County agency's when engaged in removal work on their right-of-ways.

N. Inspection of Work. All work must be completed to the satisfaction of the Parks division director, or his/her representative and any questions as to proper procedures or quality of workmanship will be resolved by same. The aforementioned ANSI standard A300 in its latest form shall serve as final authority.

O. Damage to Property. Any damage to property as a result of the Contractor's operation shall be the sole responsibility of the Contractor. Should the damage not be rectified within the time agreed upon or to the satisfaction of the Parks Division Director, the City shall reserve the right to repair or replace that which was damaged, or assess the Contractor, such cost as may be reasonable and related to damage cause by the Contractor, and deduct these cost from any payment due to the Contractor. The Contractor shall inform, in writing the Parks Division of any damages caused by the Contractor's operations within twenty-four hours after such damage occurs

P. Discontinuance of Work. The City shall have the authority to suspend the work, wholly or in part by written orders as the City may deem necessary due to unsuitable weather, special events unforeseen circumstances, or due to failure on the part of the contractor to comply with any provisions of the contract documents. Any practice obviously hazardous, as determined by the Parks Division Director, or his/her representative, shall be immediately discontinued by the contractor upon receipt of written or oral notice to discontinue such practice.

Q. Tree Location. Trees to be pruned or removed will be those as designated by the Parks Division. Marking, tagging or any other form of identification will be made prior to work being performed. Marking, tagging or any other form of identification will be in such form as to be agreeable to Contractor or City. Contractor shall coordinate an on-site meeting with the Parks Division director or his/her representative.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience, personnel, and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable

professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

C. Certified Arborist:

As a minimum, the crew lead supervisor(s) must be a current International Society of Arboriculture (ISA) Certified Arborist. Any change in the status of the "certified" individual(s) during the life of this contract must be reported to the City Forester and Parks Department at the time of occurrence. All certification numbers will be verified through the ISA's website.

D. Work Crew Supervision:

The Contractor shall provide qualified supervision of each crew at all times while working under this contract. Each supervisor shall be authorized by the Contractor to accept and act upon all directives issued by the City.

E. Examination of Site:

Contractor shall inform themselves of all the conditions under which the work is to be performed concerning the site of the work, the obstacles, which may be encountered, and all other relevant matters concerning the work to be performed and the type of removals required under this contract.

The Contractor will not be allowed any extra compensation by reason of any such matters of things concerning which the Contractor did not inform himself prior to bidding. The Contractor must employ, so far as possible, such methods and

means as will not cause any interruption or interference with any other contractor.

F. Pre-Construction Meeting

Once contract has been awarded and notice to proceed is issued, a pre-construction meeting will be held to review project specifications.

G. Starting and Completion Requirements

All contracted work shall be completed within a timely fashion, no later than 30 days of notice to proceed. The Contractor shall not be entitled to any claims against the City for damages, hindrances or delays, from any cause whatsoever, in the progress of the work or any portion thereof.

H. Working Hours

The Contractor will schedule work between the hours of 7:30 a.m. and the hours of 4:30 p.m. Monday through Friday, unless otherwise authorized by the Parks Department.

I. Inspection of Work

All work must be completed to the satisfaction of the Parks Director, or his/her representative and any questions as to proper procedures or quality of workmanship will be resolved by same.

J. Damage to Property

Any damage to property as the result of the Contractor's operations shall be the sole responsibility of the Contractor. Should the damage not be rectified within the time agreed upon or

to the satisfaction of the Parks Department, the City reserves the right to repair or replace that which was damaged, or assess the Contractor such costs as may be reasonable and related to damage caused by the Contractor, and deduct these costs from any payment due the Contractor. The Contractor shall inform, in writing, the Parks Department of any damage caused by the contractor's operation on the same day such damage occurs.

K. Discontinuance of Work

The City shall have the authority to suspend the work, wholly or in part by written order for such period as the City may deem necessary due to unsuitable weather, special events, unforeseen circumstances, or due to failure on the part of the contractor to comply with any provisions of the contract documents. Any practice obviously hazardous, as determined by the Parks Director, or his/her representative, shall be immediately discontinued by the contractor upon receipt of written or oral notice to discontinue such practice.

L. Tree Locations

Trees to be pruned or removed will be those as designated by the Parks Department. Marking, tagging, or any other forms of identification will be made prior to work being performed. Marking, tagging, or any other forms of identification will be in such form as to be agreeable to Contractor and City.

3. COMPENSATION

A. The City shall pay to the Contractor in full

payment for services rendered, a sum not to exceed twenty five thousand (\$25,000.00)dollars, inclusive of applicable gross receipts taxes.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement is for one (1) year with option to renew for an additional three (3) years and shall be effective when signed by the City and terminate on June 30, 2019, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 30 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract. The Contractor shall abide by all EPA and OSHA safety standards and regulations.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement,

including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor

shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and

limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

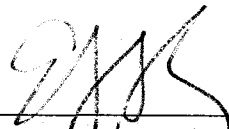
Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Parks Division
1142 Siler Road
Santa Fe, NM 87504-0909

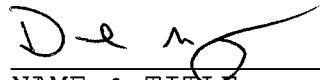
Contractor:
Southwest Fire Defense, LLC
PO Box 1172
Santa Fe, NM 87504

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

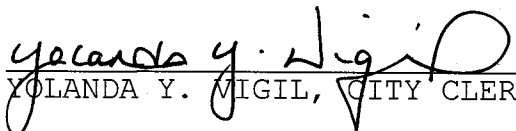

Erik Fitzenberg Interim City Manager
DATE: 7/25/18

CONTRACTOR: South West Fire Defense
Daniel Martinez Owner



NAME & TITLE
DATE: 7/27/18

CRS# 03-355099-00-9
CITY OF SANTA FE BUSINESS
REGISTRATION# 18-00148920

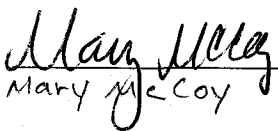

ATTEST:


YOLANDA Y. MIGIL, CITY CLERK *all*

APPROVED AS TO FORM:


KELLEY A. BRENNAN, CITY ATTORNEY *1/3*

APPROVED:


Mary McCoy, FINANCE DIRECTOR *7/25* 

PROFESSIONAL SERVICES
22513.510310