

ITEM 10.I.

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David C. Moe II, Redevelopment Manager *Dc moe*

DATE: October 23, 2010 (CC Meeting of 11/3/10)

SUBJECT: Consider an Agreement with R. A. Atmore & Sons, Inc., for Weed Abatement and General Cleanup of City Owned Properties

BACKGROUND & DISCUSSION

City owned properties require regular weed abatement and removal of debris. Staff requires the work to be handled in a timely and professional manner.

Staff is proposing to continue using R. A. Atmore & Sons, Inc., for ongoing weed abatement and general cleanup services not to exceed \$30,000.00. R. A. Atmore & Sons, Inc., has the expertise and qualifications to perform the services and is familiar with the City's needs. R. A. Atmore & Sons, Inc., has performed satisfactorily for the City under prior contracts.

FISCAL IMPACT

Funds for these services are already budgeted in the Fiscal Year 2010/2011 Budget.

STAFF RECOMMENDATION

1. Approve Agreement with R. A. Atmore & Sons, Inc., for ongoing weed abatement and general cleanup services of City owned properties, subject to final language approval by City Manager and City Attorney; and
2. Authorize City Manager to execute the Agreement on behalf of the City.

Attachment I: Agreement for weed abatement and general cleanup services

ATTACHMENT I

**AGREEMENT BETWEEN THE CITY OF MOORPARK
AND R. A. ATMORE & SONS, INC. FOR WEED ABATEMENT
AND GENERAL CLEANUP SERVICES AT VARIOUS CITY LOCATIONS**

THIS AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "City" and R. A. Atmore & Sons, Inc., hereinafter referred to as "Contractor".

WITNESSETH

Whereas, the City desires to have Contractor perform weed abatement services at various City facilities as requested. Contractor warrants that it has the qualifications, experience, and facilities to properly and timely perform said service; and

Whereas, the City and Contractor have discussed and agreed to the scope of services and compensation as described herein.

NOW, THEREFORE, it is hereby agreed by and between the parties that:

1. **TERM:** This Agreement will become effective upon the date executed and will expire on June 30, 2011, unless sooner terminated as provided hereinafter.
2. **SCOPE OF SERVICES:** Contractor agrees to perform for, and furnish to the City, weed abatement services on an as needed basis upon written request of the City.
3. **COMPENSATION:** Upon satisfactory performance of the services herein above described in Scope of Services, Contractor shall receive compensation as set forth in Attachment 1. This amount shall not exceed \$20,000 for the term of the Agreement unless additional payment is approved by written amendment to this Agreement.

Payment shall be made within thirty (30) days of receipt of invoice except for those which are contested/questioned and are returned by the City, with written explanation within thirty (30) days of receipt of invoice.

4. **TIME FOR PERFORMANCE:** Contractor agrees that it shall diligently and responsibly pursue the performance of the services required of it by this Agreement and that said services shall begin immediately upon the execution of this Agreement in accordance with the Project.

5. **IMPOSITION OF DAMAGES:** If at any time the City determines that the Contractor's performance pursuant to this Agreement has not been in conformity with the provisions of this Agreement, the City Manager or his/her designee may advise the Contractor in writing of such deficiencies. The City Manager or his/her designee shall, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified by the City Manager or his/her designee, a reasonable time for correction shall be seven (7) calendar days, upon written notification.

In the event Contractor fails to correct deficiencies as prescribed or perform pursuant to this Agreement, City may impose liquidated damages. In addition to liquidated damages, City shall have the right to provide said deficient services by other means and to bill Contractor for all costs including City's administrative costs. Any such cost shall be deducted from the Contractor's payment.

If Contractor continues to fail to correct deficiencies, the City, at its sole discretion, may find Contractor in default and in breach of contract and fine Contractor Liquidated Damages pursuant to Section 6.

6. **LIQUIDATED DAMAGES:** Pursuant to Section 5, the City may, at its sole discretion, assess liquidated damages. Contractor agrees that any deficiency not corrected in the prescribed time frame will result in damage and injury to the City. City and Contractor agree that actual damages occurring to the City as a result of any one or more deficiencies, on a given day, will be difficult if not impossible to ascertain with any degree of certainty or accuracy. Accordingly, City and Contractor agree that for each individual deficiency incident not corrected, Contractor shall pay to City, as and for liquidated damages, and not as a penalty, the sum of \$25 per deficiency each day that the deficiency remains until corrected.
7. **BREACH OF CONTRACT:** If Contractor defaults in this Agreement it shall have three (3) days after receipt of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.
8. **BANKRUPTCY:** City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on Contractor, if any of the following should occur to Contractor:
 - a. Be adjudged bankrupt;
 - b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;

- c. Make a general assignment for the benefit of creditors;
 - d. Suffer any judgment against it to remain unsatisfied or unbounded of record for thirty (30) days or longer; or
 - e. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.
9. **OWNERSHIP OF DOCUMENTS:** Upon satisfactory completion of, or in the event of termination, suspension, or abandonment of this Agreement, all original documents, electronic documents, designs, drawings, computer files, and notes, if any, prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of Contractor.
10. **INDEPENDENT CONTRACTOR:** Contractor is and shall at all times remain as to City a wholly independent Contractor. Neither City nor any of its officers, employees, servants or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, servants and agents, except as herein set forth. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, servants, or agents are in any manner officers, employees, servants, or agents of City.
11. **LEGAL RESPONSIBILITIES:** Contractor shall keep itself informed of all state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances and regulations. Contractor shall not pay less than the prevailing wages issued by the Director of the California Department of Industrial Relations. Contractor shall at all times observe and comply with all such laws and regulations. The City and its officers, employees, servants, and agents shall not be liable at law or in equity occasioned by failure of Contractor to comply with this section. Contractor agrees to maintain a current business registration with the City.
12. **NOTICE:** Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be served by certified mail, postage prepaid, return receipt requested, addressed to:

City: City of Moorpark
Attn: City Manager
799 Moorpark Avenue
Moorpark, CA 93021

Contractor: R. A. Atmore & Sons, Inc.
Attn: Richard Atmore, Jr.
Foothill Weed Abatement
2977 Sexton Canyon Road
Ventura, CA 93003

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notice shall be deemed to have been served seventy-two (72) hours after the same has been deposited in the United States Postal Service. This shall be a valid and sufficient service of notice for all purposes.

13. **ASSIGNMENT:** Contractor shall not assign this Agreement or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that the Contractor is uniquely qualified to perform the services provided for in this Agreement.
14. **INSURANCE:** The Contractor shall maintain prior to the beginning of, and for the duration of this Agreement, insurance coverage as specified in Attachment 2, attached to and made part of this Agreement.
15. **INDEMNIFICATION:** Contractor shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, and any and all of its employees, officials and agents ("the Indemnitees") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arises out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, willful misconduct, errors or omissions, in performance of this Agreement by Contractor or by any individual, or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor, except such damage as caused by negligence of the City of any of its officers, employees, servants, project coordinators or agents.

Indemnification Provisions from Subcontractors: Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

City does not and shall not waive any rights that it may have against Contractor by reason of this section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in this section.

16. ATTORNEY'S FEES: If any action at law or suit in equity, including an action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, and necessary disbursements, in addition to any other relief to which it may be entitled.
17. TERMINATION: This Agreement, or portions thereof, may be terminated or canceled in any one of the following manners:
 - a. By mutual agreement of both parties;
 - b. Upon five (5) days written notice by City, with or without cause;
 - c. Upon thirty (30) days written notice by Contractor, with or without cause; or
18. ENTIRE AGREEMENT: This Agreement and any documents or instrument attached hereto or referred to herein integrate all terms and conditions mentioned herein or incidental hereto and supersede all negotiations and prior writing with respect to the subject matter hereof.

In the event of conflict between the terms, conditions or provisions of this Agreement and any such document or instrument, the terms and conditions of this Agreement shall prevail.
19. EFFECTIVE DATE: This Agreement shall be effective from and after the date it is signed by the representatives of City.
20. GOVERNING LAW: This Agreement shall be governed by, and constructed in accordance with, the laws of the State of California.
21. VENUE: This Agreement is made, entered into, executed and is to be performed in Moorpark, Ventura County, California, and any action filed in any court for interpretation, enforcement or breach otherwise of the terms, covenants and conditions of this Agreement shall be filed in the applicable court in Ventura County, California.
22. AUTHORITY TO EXECUTE AGREEMENT: Both City and Contractor do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreement for such party.
23. CITY'S AGENT: The City Manager or his/her designee shall have the right to review,

coordinate and approve all work to be performed by Contractor pursuant to the terms of this Agreement and shall be the City's agent with respect to review, coordination and acceptance of the services to be performed by the Contractor.

- 24. INTERPRETATION OF AGREEMENT: Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared jointly and equally, by the parties and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.
- 25. CAPTIONS: The captions of the various sections of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective sections hereof.

IN WITNESS WHEREOF, the parties; hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

R. A. ATMORE & SONS, INC.

By _____
Steven Kueny, City Manager

By _____
Richard Atmore, Jr., President

Date _____

Date _____

ATTEST:

Deborah Traffenstedt, City Clerk

ATTACHMENT 1

(Directly behind this page)

ATTACHMENT 2

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos, or autos rented from a Car Rental Agency, in any way on this project, Contractor shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum of \$25,000 self-insured retention for liability not covered by primary but covered by umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Contractor, sub-Contractors or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, error or omissions of the Architect and "Covered Professional Services" as designated in the policy must specifically include work performed under this Contract. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Contract.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by Contractor. Contractor and the City agree to the following with respect to insurance provided by Contractor:

1. Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992 or similar edition approved by City. Contractor also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right to subrogation prior to a loss. Contractor agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Contractor's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at the City's option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the City.
10. Contractor agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Contractor, provide the same minimum insurance required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor 90 days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to the City.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.
15. Contractor will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Contractor for

the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.

22. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.