



AGENDA REPORT

Meeting Date: July 19, 2016

Item Number: E-9

To: Honorable Mayor & City Council

From: Trish Rhay, Assistant Director of Public Works Services
Michelle Tse, Planning and Research Analyst

Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MURPHY SAFETY SWITCH OF CALIFORNIA, INC. DBA MURCAL, INC. TO PROVIDE PREVENTATIVE MAINTENANCE AND REPAIR SERVICE OF THE MURPHY PANEL DIESEL ENGINE CONTROLLERS; AND

APPROVAL OF A PURCHASE ORDER OF \$29,000 PER YEAR FOR A TOTAL NOT TO EXCEED AMOUNT OF \$87,000

Attachments: 1. Agreement

RECOMMENDATION

It is recommended that the City Council approve the three-year Agreement with Murphy Safety Switch of California DBA Murcal, Inc. ("Murcal") to provide maintenance and repair service of the murphy panel diesel engine controllers for the City's water pump stations, and approval of a Purchase Order of \$29,000 per year for a total not to exceed amount of \$87,000.

INTRODUCTION

The City currently has seven water reservoir pump stations located throughout the City as part of its water distribution system to provide water to over 11,000 customers. These pump stations are typically powered by electricity. However, the pump stations are equipped with murphy panel diesel engine controllers so that in the event of a power outage, the reservoir pump stations can be temporarily powered by diesel to ensure continued water supply to customers. An instance in which the diesel controllers have been activated is when utility companies schedule "brownouts" i.e. scheduled power reductions to a subset of its utility customers in order to deliver more electricity during peak demand periods.

DISCUSSION

Regular maintenance and necessary repairs are needed to ensure that the diesel supply controllers are in proper working order. It is recommended that the City Council approve the agreement with Murphy Safety Switch of California, Inc. DBA Murcal, Inc. to provide

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preventative maintenance for the diesel control panels. Staff is recommending that the City enter into a maintenance agreement with vendor Murcal, Inc. as they are the manufacturer of the control panels and have direct access to replacements parts and trained personnel for better service level and overall cost for the next three years.

FISCAL IMPACT

Funds are budgeted in the Water Enterprise Fund budget to cover this expense.



George Chavez
Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MURPHY SAFETY SWITCH OF CALIFORNIA, INC. DBA MURCAL, INC. TO PROVIDE PREVENTATIVE MAINTENANCE AND REPAIR SERVICE OF THE MURPHY PANEL DIESEL ENGINE CONTROLLERS

NAME OF VENDOR:	MURPHY SAFETY SWITCH OF CALIFORNIA, Inc. dba MURCAL, INC.
RESPONSIBLE PRINCIPAL OF VENDOR:	Bob Murphy, President
VENDOR'S ADDRESS:	MURCAL, Inc. 41343 12'th Street West Palmdale, CA 93551 Attention: Bob Murphy, President
CITY'S ADDRESS:	City of Beverly Hills 345 Foothill Road Beverly Hills, CA 90210 Attention: Jack Merluzzo, Utility Services Manager
COMMENCEMENT DATE:	July 1, 2016
TERMINATION DATE:	June 30, 2019
CONSIDERATION:	Not to exceed \$ 29,000 per year, total not to exceed \$87,000.

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MURPHY SAFETY SWITCH OF CALIFORNIA, INC. DBA MURCAL, INC. TO PROVIDE PREVENTATIVE MAINTENANCE AND REPAIR SERVICE OF THE MURPHY PANEL DIESEL ENGINE CONTROLLERS

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and MURPHY SAFETY SWITCH OF CALIFORNIA, Inc. dba MURCAL, INC. (hereinafter called "VENDOR").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. VENDOR represents that it is qualified and able to perform the Scope of Works.

NOW, THEREFORE, the parties agree as follows:

Section 1. VENDOR's Scope of Work. VENDOR shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CITY shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by VENDOR must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance.

VENDOR shall commence its services under this Agreement upon THE Commencement Date or upon a receipt of a written notice to proceed from CITY. VENDOR shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

The City Manager or his designee may extend the time of performance in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation

CITY agrees to compensate VENDOR for the services and/or goods provides under this Agreement, and VENDOR agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein, based on the hourly rates set forth in Exhibit B.

(b) Expenses

The amount set forth in paragraph (a) shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) Additional Services. City may from time to time require VENDOR to perform additional services not included in the Scope of Services. Such requests for additional services shall be made by City in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. CITY shall pay VENDOR said Consideration in accordance with the method and schedule of payment set forth in Exhibit B.

Section 5. Independent Contractor. VENDOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of VENDOR or any of VENDOR's employees, except as herein set forth. VENDOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by VENDOR without the prior written approval of CITY. Any attempt by VENDOR to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) VENDOR's Responsible Principal set forth above shall be principally responsible for VENDOR's obligations under this Agreement and shall serve as principal liaison between CITY and VENDOR. Designation of another Responsible Principal by VENDOR shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. VENDOR represents that it has, or shall secure at its own expense, all personnel required to perform VENDOR's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. VENDOR shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of VENDOR. VENDOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with VENDOR.

Section 11. Insurance.

(a) VENDOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by VENDOR.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by VENDOR in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) VENDOR shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) VENDOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at VENDOR's expense, the premium thereon.

(e) At all times during the term of this Agreement, VENDOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. VENDOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by VENDOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, VENDOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or VENDOR shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. VENDOR agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from

any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of VENDOR or any person employed by VENDOR in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to VENDOR. VENDOR agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by VENDOR, VENDOR shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall VENDOR be entitled to receive more than the amount that would be paid to VENDOR for the full performance of the services required by this Agreement. VENDOR shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide VENDOR with all pertinent data, documents, and other requested information as is available for the proper performance of VENDOR's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by VENDOR and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. VENDOR shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 3 years. City shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 18. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and VENDOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and VENDOR.

Section 20. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 22. City Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than VENDOR.

Section 23. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the ____ day of _____ 20____, at Beverly Hills, California.

CITY OF BEVERLY HILLS, a municipal corporation

JOHN A. MIRISCH
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE (SEAL)
City Clerk

[Signatures continue]

VENDOR: MURPHY SAFETY SWITCH OF CALIFORNIA dba MURCAL, INC.



BOB MURPHY
President



JOHN H. MURPHY
Assistant Secretary

APPROVED AS TO FORM:

~~LAURENCE S. WIENER
City Attorney~~

APPROVED AS TO CONTENT:

~~MAHDI ALUZRI
City Manager~~

~~GEORGE CHAVEZ
Assistant City Manager / Director of Public
Works Services~~

~~SHARON L HEUREUX DRESSEL
Interim Risk Manager~~

VENDOR: MURPHY SAFETY SWITCH OF CALIFORNIA dba MURCAL, INC.

~~_____
BOB MURPHY
President~~

~~_____
JOHN H. MURPHY
Assistant Secretary~~

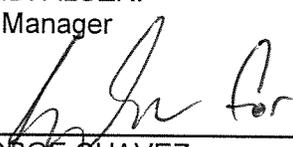
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager



GEORGE CHAVEZ
Assistant City Manager / Director of Public
Works Services



SHARON L'HEUREUX DRESSEL
Interim Risk Manager

EXHIBIT A

SCOPE OF WORK

VENDOR shall perform preventive maintenance and repair service on the Murphy Panel Diesel Engine Controllers at CITY's reservoir pumping stations listed below:

Reservoir 3A

Reservoir 4B

Reservoir 5

Reservoir 6

Reservoir 7

Greystone Reservoir

Woodland Reservoir

VENDOR shall respond to emergency call outs as soon as possible, but at no time shall the elapsed time of response be more than 24 hours. VENDOR shall be on-site to evaluate the emergency call outs and make necessary repairs within 24 hours.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

CITY shall compensate VENDOR for the satisfactory performance of the work described in this Agreement in an amount not to exceed \$29,000 per year (Twenty Nine Thousand Dollars per year) in total for the term of the Agreement, including reimbursable expenses.

RATES

Hourly Rate On-Site	\$120.00/hr. Hourly
Travel Time Rate	\$75.00/hr. Overnight
Stay Including Meals	\$225.00/per night
Portable Exhaust Gas Analyzer	\$300.00 per calendar day
Special Tools and Equipment Rental	Cost plus 15%
Airline Travel/Rental Car Expenses	Cost plus 10%
Mileage	\$1.50 per mile

The charged rates will increase if work is performed in excess of 12 hours per day or on a holiday or weekend. The following multipliers apply:

Over 12 hours per day	1.5 times the hourly On-site Rate or <i>\$180.00/hr.</i>
Saturday	1.5 times the hourly On-site Rate or <i>\$180.00/hr.</i>
Sunday	1.5 times the hourly On-site Rate or <i>\$240.00/hr.</i>
National Holidays	3 times the hourly On-site Rate or <i>\$360.00/hr.</i>

SCHEDULE OF PAYMENT

VENDOR shall submit an itemized statement to CITY for its services performed, which shall include documentation setting forth in detail a description of the services rendered. CITY shall pay VENDOR the amount of such billing within thirty (30) days of receipt of same.

EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

NAMED INSURED

COMPANIES AFFORDING COVERAGE

ADDRESS

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> VENDOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: VENDOR agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of VENDOR's officers, employees, agents or others employed by VENDOR while engaged by VENDOR in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : _____ BY : _____

 Authorized Insurance Representative

AGENCY : _____ TITLE : _____
 _____ Address : _____
