



AGENDA REPORT

Meeting Date: February 17, 2009

Item Number: F-25

To: Honorable Mayor & City Council

From: Rene Biadoma, Fleet Manager *RB*

Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND TANK SPECIALISTS, INC. DBA TANK SPECIALISTS OF CALIFORNIA FOR UPGRADES ON TWO UNDERGROUND GASOLINE STORAGE TANKS AND GASOLINE FUEL DISPENSERS AT THE CENTRAL FUEL FACILITY; AND

APPROVAL OF A PURCHASE ORDER IN THE NOT TO EXCEED AMOUNT OF \$56,265 TO TANK SPECIALISTS, INC. DBA TANK SPECIALISTS OF CALIFORNIA FOR THE SERVICES

Attachment:

1. Agreement
2. South Coast Air Quality Management District (SCAQMD) Rule 461

RECOMMENDATION

Staff recommends that the City Council move to: 1) Approve the agreement between the City of Beverly Hills and Tank Specialists, Inc. dba Tank Specialists of California (Tank Specialists) for upgrades on two underground gasoline storage tanks and gasoline fuel dispensers at the Central Fuel Facility, and 2) Approve a purchase order in the amount of \$56,265 including contingency of \$5,000 to Tank Specialists for the services.

INTRODUCTION

This report outlines the regulatory environment leading to this request for City Council to accept a proposal from Tank Specialists to upgrade the Enhanced Vapor Recovery (EVR) systems on two gasoline underground storage tanks (UST) and their corresponding pump dispensers, and approve issuance of a purchase order in the amount of \$56,265, which includes a contingency amount of \$5,000.

DISCUSSION

The SCAQMD Rule 461 (Attachment 2) has mandated that every gasoline storage and dispensing facility located within the South Coast basin must be fitted with EVR components that are certified by the California Air Resources Board (CARB). The intent of this mandate is to further minimize the release of harmful vapors (gasoline fumes) into

the atmosphere. Rule 461 further stipulates that this upgrade must be completed by April 01, 2009. The City of Beverly Hills owns and operates a gasoline dispensing facility, which consists of two gasoline UST's with four fuel dispensers and is under the jurisdiction of Rule 461.

Fleet services staff solicited proposals from three CARB-certified vendors for this upgrade. After evaluating the three proposals received, staff has determined that the proposal submitted by Tank Specialists has the lowest cost to the City and fully meets the requirements required by Rule 461. Furthermore, the SCAQMD will inspect and approve the vendor's completed work.

Summary of the vendor's service proposal is as follows:

Item	Description	Cost
1.	Gasoline UST EVR Upgrade (retrofit to the UST's filler components)	\$20,669.00
2.	Installation of Healy EVR Phase II Components (Retrofit to the fuel dispensing pumps and installation of a Healy Clean-air separator)	\$30,596.00
3.	Contingency amount	\$5,000.00
Total Purchase Order Amount:		\$56,265.00

FISCAL IMPACT

Funding source for this upgrade is the Capital Improvement Program (Fund 08) Public Works Yard and Facilities Upgrade (35080894-85040) account.



Scott Miller
Finance Approval



David Gustavson
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
TANK SPECIALISTS, INC. DBA TANK SPECIALISTS OF CALIFORNIA
FOR UPGRADES ON TWO UNDERGROUND GASOLINE STORAGE
TANKS AND GASOLINE FUEL DISPENSERS AT THE CENTRAL FUEL
FACILITY

NAME OF CONTRACTOR: Tank Specialists, Inc. dba
Tank Specialists of California

RESPONSIBLE PRINCIPAL
OF CONTRACTOR: Gary G. Backe, President

CONTRACTOR'S ADDRESS: 560 Birch Street, Building #3
Lake Elsinore, CA 92530

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Rene Biadoma,
Fleet Manager

COMMENCEMENT DATE: Upon receipt of Notice to Proceed

TERMINATION DATE: April 1, 2009 unless extended
pursuant to Section 2 of the Agreement

CONSIDERATION: Fee not to exceed \$51,265, as more
particularly described in Exhibit A;
Contingency not to exceed \$5,000
Total not to exceed \$56,265

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
TANK SPECIALISTS, INC. DBA TANK SPECIALISTS OF CALIFORNIA
FOR UPGRADES ON TWO UNDERGROUND GASOLINE STORAGE
TANKS AND GASOLINE FUEL DISPENSERS AT THE CENTRAL FUEL
FACILITY

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and Tank Specialists, Inc. dba Tank Specialists of California (hereinafter called "Contractor").

RECITALS

A. City desires to have certain services provided (the "Services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. Contractor represents that it is qualified and able to perform the Services.

NOW, THEREFORE, the parties agree as follows;

Section 1. Contractor's Services. Contractor shall perform the Services according to generally accepted, professional standards and in a manner satisfactory to City, as described in Exhibit A, attached hereto and incorporated herein.

Section 2. Time of Performance. Contractor shall perform the Services on or by the Termination Date set forth above, unless a later date is agreed to by the City Manager or his designee in writing.

Section 3. Compensation. City agrees to compensate Contractor, and Contractor agrees to accept in full satisfaction for the Services required by this Agreement an amount not to exceed the Consideration set forth above. Said Consideration shall constitute reimbursement of Contractor's fee for the Services as well as the actual cost of any equipment, materials, and supplies necessary to provide the Services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). City shall pay Contractor in accordance with the schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

Section 4. Independent Contractor. Contractor 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 Contractor or any of Contractor's employees, except as herein set forth. Contractor 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 5. Responsible Principal(s).

(a) Contractor's Responsible Principal set forth above shall be principally responsible for Contractor's obligations under this Agreement and shall serve as principal liaison

between City and Contractor. Designation of another Responsible Principal by Contractor 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 6. Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required to perform Contractor's Services under this Agreement. Contractor may associate with or employ associates or subcontractors in the performance of its Services under this Agreement with the prior written approval of City, but at all times shall be responsible for their Services.

Section 7. Interests of Contractor. Contractor 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 Services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Contractor.

Section 8. Insurance.

(a) Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from any wrongful or negligent acts by Contractor.

(b) Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, 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 Contractor in performing the Services required by this Agreement.

(c) Contractor agrees to maintain in force at all times during the performance of work under this Agreement workers compensation insurance as required by law.

(d) Contractor shall at all times during the term of the Agreement carry, maintain and keep in full force and effect, a policy or policies of environmental pollution insurance, including Contractors Pollution Liability coverage with a minimum of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(e) Contractor shall require each of its subcontractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(f) 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 A-;VII in the latest edition of Best's Insurance Guide.

(g) Contractor 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 Contractor's expense, the premium thereon.

(h) At all times during the term of this Agreement, Contractor 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. Contractor shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement 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.

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

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

Section 9. Indemnification. Contractor 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 Contractor or any person employed by Contractor in the performance of this Agreement.

Section 10. Termination.

(a) City may cancel this Agreement at any time upon five (5) days written notice to Contractor. Contractor 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 Contractor, Contractor shall be paid full compensation for all Services performed by Contractor, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Contractor shall be paid an amount equal to the amount of Services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Contractor for the full performance of the Services required by this Agreement.

Section 11. Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services to be performed by Contractor under this Agreement, or which would conflict in any

manner with the performance of its Services hereunder. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of its Services pursuant to this Agreement.

Section 12. Non-Discrimination and Equal Employment Opportunity.

(a) Contractor shall not discriminate, harass, or allow harassment on the basis or race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), family care leave, or sexual orientation, in the performance of its Services and duties pursuant to this Agreement, and will comply with all laws, rules and regulations relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, promotion, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) Contractor shall comply with the provisions of the California Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.) and all other applicable provisions of federal or State law.

Section 13. Compliance with Environmental Laws.

(a) Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments, including, without limitation the Federal Clean Air Act (42 U.S.C. § 7401 et seq.) of the Federal Water Pollution Prevention Act (33 U.S.C. § 1251 et seq.), and the laws implementing those acts, the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), and the Health & Safety Code provisions related to Underground Storage of Hazardous Substances, Section 25280, et. seq. Contractor acknowledges that it is familiar with South Coast Air Quality Management District Rule 461, and all requirements therein with respect to the implementation of Phase I and Phase II Enhanced Vapor Recovery Requirements.

(b) Contractor shall ensure that all waste generated during the course of performing the Services, including all hazardous and non-hazardous waste, is properly disposed of and shall further ensure that the City is provided with copies of all documentation referenced in Exhibit A, hereto. For purposes of the Agreement, "hazardous waste" shall have the same meaning as defined under California Health and Safety Code § 25117.

Section 14. Licenses and Permits. Contractor agrees to maintain in effect at all times valid local, state and federal licenses and permits as required by law.

Section 15. Notice. Any notice required to be given to Contractor shall be deemed duly and properly given upon delivery, if sent to Contractor postage prepaid to the Contractor's address set forth above or personally delivered to Contractor at such address or other address specified to City in writing by Contractor.

Any notice required to be given to City shall be deemed duly and properly given upon delivery, if sent to City postage prepaid to City's address set forth above or personally delivered to City at such address or other address specified to Contractor in writing by City.

Section 16. Successors and Assigns. Contractor shall not assign or attempt to assign any portion of this Agreement without the written approval of City.

Section 17. Entire Agreement. This Agreement represents the entire integrated agreement between City and Contractor, 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 Contractor.

Section 18. Time is of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each and every provision hereof is hereby declared to be and made a material, essential and necessary part of this Agreement. Contractor shall conform to all equipment installation and testing dates as required by SCAQMD Rule 461(i).

Section 19. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 20. Attorney's Fees. In the event that City or Contractor commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 21. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this _____ day of _____, 200 ____.

CITY OF BEVERLY HILLS
A Municipal Corporation

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

[Signatures continue]

CONTRACTOR: TANK SPECIALISTS, INC.
DBA TANK SPECIALISTS OF CALIFORNIA

GARY G. BACKE
President

ESTEE BACKE
Secretary

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD, CCM
City Manager

DAVID D. GUSTAVSON
Director of Public Works & Transportation

KARL KIRKMAN
Risk Manager

EXHIBIT A
SCOPE OF SERVICES

Background

The South Coast Air Quality Management District (SCAQMD) Rule 461 mandates that all gasoline storage and dispensing facilities located and operated within its area of responsibility be upgraded with the CARB-approved Enhanced Vapor Recovery (EVR I & II) Systems by April 01, 2009. The City-owned gasoline fueling facility, located at 9335 W. Third Street, is subject to this regulation.

Intent

Completion of these services by the Contractor will bring the City's underground gasoline-storage tanks and gasoline fuel dispensers into compliance with the current standards required by the SCAQMD's Rule 461.

Scope of Work

CONTRACTOR shall perform the following services:

1. **EVR I UPGRADE:**

Address all issues with the CITY's underground fuel system in order to meet the requirements of the Enhanced Vapor Recovery regulations and furnish the necessary personnel and equipment to upgrade two (2) double-walled gasoline underground storage tanks with EVR equipment. Tasks associated with this work include:

a. PHASE I – CAD Design and Permitting

- Prepare and submit engineering drawings; obtain permits from the Los Angeles County Public Works Department and the SCAQMD. Permit fees will be billed separately at cost to the City.

b. PHASE II - Site Preparation

- Remove and dispose of the existing non-approved fill and vapor recovery equipment on two (2) unleaded underground storage tanks.
- Sawcut and breakout concrete surrounding the two fill/spill manways; the concrete will be removed three feet from existing manways.
- Make the necessary modifications to the sump that is missing a sump reducer (top hat).
- Provide and install one sump reducer.

- Provide and install two new fill/spill manways; the new manways will be of cam-lock design.
 - Form and pour concrete around the new manways; the concrete will be 3500 PSI in strength.
- c. PHASE III – Tank Upgrade
- Provide and install the following equipment on each tank:
 1. (1) OPW Low profile swivel fill adapter
 2. (1) OPW Fill cap
 3. (1) OPW Swivel vapor recovery adapter
 4. (1) OPW Vapor recovery cap
 5. (1) OPW Jack screw assembly
 6. (2) OPW Face seal adapter
 7. (1) OPW pressure/vacuum vent
 8. (1) P110-37G Manway collar gasket
 9. (1) Morrison 305XPA-1100EV-EVR Cap & Ring
- d. PHASE IV- Site Restoration
- Remove all debris and equipment, leaving site in original condition
- e. PHASE V – Test Installation and Train Personnel
- Test the complete system per regulatory requirements and obtain approvals. Tests include:
 1. TP 201.3 Pressure Decay
 2. TP 201.4 Back Pressure (blockage)
 3. TP 201.6 Liquid Removal Pre-Test
 4. TP 201.1B Static Torque Test
 5. TP 201.1C Pressure Integrity Drop Tube/Drain Test
 6. TP 201. ID Leak Rate of Drop Tube Overfill

7. TP 201.1E Leak Rate of Pressure/vacuum Vent Valves

8. Additionally-Periodic Compliance Inspection Report

- Perform all inspections as required to complete system

2. **EVR II UPGRADE**

Provide the necessary personnel and equipment to install the Healy Phase II EVR equipment on the existing dispensers. Form and pour a concrete pad sixteen feet away from the dispensers. Mount Healy Clean Air Separator to new concrete pad and connect to the vent line. Install JEM Healy tank enclosure.

a. PHASE I – CAD Design and Permitting

- Prepare CAD drawings, submit drawings, and obtain approvals with permits from the Los Angeles Department of Public Works and the SCAQMD.

b. PHASE II –Site Preparation

- Provide barricades around construction area.

c. PHASE V –Installation of Healy Components

- Provide and install two (2) Healy VP1000M Retrofit kits.
- Provide and install two (2) Healy Z070E (electrical install kit)
- Provide and install four (4) Healy Z071V (vapor install kit)
- Provide and install four (4) Healy whip hoses.
- Provide and install four (4) Healy vapor assist breakaways. Provide and install four (4) Healy 8.5' coaxial hose with adapters.
- Provide and install four (4) Healy 4' coaxial hoses.
- Provide and install four (4) Healy series 900 nozzles.
- Provide and install four (4) Healy hose clamps.

d. PHASE VI –INSTALLATION OF HEALY CLEAN AIR SEPARATOR

- Form and pour a concrete pad. (This concrete pad will be for the Clean Air Separator and the JEM enclosure.)
- Provide and install one (1) Healy clean air separator. Provide and install two (2) crash posts. Connect the Healy clean air separator to the existing vent lines.

e. PHASE VII- Site Restoration

- Remove and dispose of all debris, leaving site in original condition.

f. PHASE VIII- Testing

- Provide certified personnel for system start-up.
- Perform all tests and inspections required by regulatory agency.

3. OTHER SERVICES AND COSTS

- a. Cost of permits will be billed separately at cost to City.
- b. Additional work or material, not listed above, may be added by mutual written agreement.

EXHIBIT B

SCHEDULE OF PAYMENT

The maximum amounts that Contractor may charge City during each project milestone shall be the following not to exceed percentages of the total amount of the Agreement. Upon completion of the services required by each project milestone of this Agreement, Contractor 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, including a list of materials used.

Project Milestone	Percentage
• Upon acceptance of purchase order to cover the initial cost of material	54%
• Upon installation of equipment	36%
• Upon completion of testing	10%

City shall pay Contractor the amount of such billing within thirty (30) days of receipt of same.



CERTIFICATE OF INSURANCE

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

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

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"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

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: Contractor 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 contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor 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 _____
 : _____
