



AGENDA REPORT

Meeting Date: May 3, 2016
Item Number: D-8
To: Honorable Mayor & City Council
From: Chad Lynn, Assistant Director of Public Works Services
Logan Phillippo, Management Analyst

Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND DATA SPECIALTIES, INC. FOR AS-NEEDED CITY-WIDE UNINTERRUPTIBLE POWER SUPPLY (UPS) SYSTEM TECHNICAL SUPPORT, REPAIR, REPLACEMENT AND PREVENTATIVE MAINTENANCE SERVICES

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an Agreement between the City of Beverly Hills ('City') and Data Specialties, Inc. ('Data Specialties') for Uninterruptible Power Supply (UPS) device technical support, repair, replacement and preventative maintenance services in the Not-To-Exceed amount of \$200,000.

INTRODUCTION

The City of Beverly Hills Public Works Services Department maintains several UPS devices at various City facilities so that emergency power is available in the event of a main power source outage. When a main power source fails, UPS devices provide enough battery power to either start another backup power generator or properly shut down equipment. UPS devices ensure continuous, uninterrupted power to critical equipment that service the Police Department, Information Technology Department and backup lighting at select City and parking facilities so that motorists and pedestrians may safely egress. Additionally, there are forty-nine (49) UPS devices that service the City's Municipal Area Network (MAN) infrastructure, which supports City connectivity to Closed-circuit Television, Automated License Plate Recognition and other City systems.

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There are additional unplanned and unpredictable maintenance and repair needs to the UPS system which require an immediate response with specialized expertise so that UPS devices and the UPS system properly function during a main power outage.

Staff is proposing an agreement with Data Specialties to provide these services based on Data Specialties' industry experience, experience with City infrastructure and quality of prior work performed. The contract will provide preventative maintenance as directed by Facilities staff. Additionally, when a specific need arises for technical support, maintenance, repair or replacement services, the City will request Individual Project Proposals from Data Specialties, which will provide a cost for the maintenance project along with a Not-To-Exceed amount including all labor and expenses. The determination to move forward with the project will be based on overall cost, response time to inquiries, schedule of the work, potential impacts, experience with similar projects and ability to perform the work. Upon the City's request, an Individual Project Order (IPO) and Purchase Order will be issued by the City before any as-needed work is initiated. Specific terms of this agreement include:

- A requirement to obtain a written IPO for as-needed work upon City request
- An initial term of one (1) year with three (3) additional (1) year terms to be executed at the discretion of the City for a total four (4) year term
- A total Not-To-Exceed amount of \$200,000 over the entire agreement term
Insurance and indemnification provisions as approved by the Risk Manager

Any future agreements and Purchase Orders with Data Specialties that exceed \$50,000 will remain subject to review and approval by the City Council. This limitation excludes activities in response to a declared emergency. Agreements, Purchase Orders or expenditures over \$50,000 that arise out of a declared emergency are required to be reported to the City Council at the next public meeting.

Historically, the City did not have an aggregated agreement in place for preventative and responsive maintenance of UPS systems. In many cases, service was performed on an ad-hoc, responsive basis when there were imminent or actual failures. Over time, multiple calls for responsive service resulted in unrelated service agreements by different client departments for disparate services. For example, the City entered into a UPS maintenance agreement for Police Department emergency power needs and a separate agreement for the Information Technology (IT) data center with the same vendor, Data Specialties. Staff is working to consolidate these services under a City-wide UPS maintenance agreement. Historically, UPS systems have been installed and maintained by Data Specialties through selective processes, using independent agreements specific to one or more facilities. Data Specialties has had an excellent track record in providing a high level of service in maintaining the UPS system. Additionally, the service provider has been highly responsive to City needs and is familiar with the configuration, programming and operation of the City UPS system and devices. As such, staff is recommending that it is in the best interest of the City to enter into the proposed agreement with Data Specialties as provided herein. As the current agreements term out, the City will work to find additional qualified vendors to enter into a competitive selection process for the long-term service needs.

FISCAL IMPACT

Funding for projects associated with regular maintenance and repair will be provided each fiscal year as part of the operations program budget. Projects related to capital

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replacement of UPS devices will be provided through Capital Improvement Project 0922, Replace UPS Equipment. No additional funding is required at this time for approval or to enter into these proposed agreements. The proposed agreement provides for a Not-To-Exceed consideration in the amount of \$200,000 over the total term. Based on the actual work needed over the term of the agreement, this total Not-To-Exceed value may not be required or actually expended.



George Chavez

Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND DATA SPECIALTIES, INC. FOR AS-NEEDED CITY-WIDE UNINTERRUPTIBLE POWER SUPPLY (UPS) SYSTEM TECHNICAL SUPPORT, REPAIR, REPLACEMENT AND PREVENTATIVE MAINTENANCE SERVICES

NAME OF CONTRACTOR: DATA SPECIALTIES, INC.

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Juan Vega, Service Manager

CONTRACTOR'S ADDRESS: 8400 Kass Drive
Buena Park, CA 90621
Attention: Juan Vega, Service Manager

CITY'S ADDRESS: City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210
Attention: George Chavez, Assistant City
Manager/Director of Public Works Services

COMMENCEMENT DATE: July 1, 2016

TERMINATION DATE: June 30, 2017

CONSIDERATION: Not to exceed \$ 200,000.00

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND DATA SPECIALTIES, INC. FOR AS-NEEDED CITY-WIDE UNINTERRUPTIBLE POWER SUPPLY (UPS) SYSTEM TECHNICAL SUPPORT, REPAIR, REPLACEMENT AND PREVENTATIVE MAINTENANCE SERVICES

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and DATA SPECIALTIES, INC. (hereinafter called "CONTRACTOR").

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

NOW, THEREFORE, the parties agree as follows:

Section 1. CONTRACTOR's Scope of Work. CONTRACTOR 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 CONTRACTOR 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.

CONTRACTOR shall commence its services under this Agreement upon the Commencement Date or upon a receipt of a written notice to proceed from CITY. CONTRACTOR 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 three additional one-year terms or such other term not to exceed three 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 CONTRACTOR for the services and/or goods provides under this Agreement, and CONTRACTOR 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.

(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 CONTRACTOR 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 CONTRACTOR said Consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

Section 5. 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 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONTRACTOR without the prior written approval of CITY. Any attempt by CONTRACTOR 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) 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 8. Personnel. CONTRACTOR represents that it has, or shall secure at its own expense, all personnel required to perform CONTRACTOR'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. CONTRACTOR 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 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 Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONTRACTOR.

Section 11. Insurance.

(a) CONTRACTOR 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 Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONTRACTOR.

(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 CONTRACTOR in performing the Scope of Work required by this Agreement.

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

(b) CONTRACTOR 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) 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.

(e) 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 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 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.

(g) 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 12. 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 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 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 based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONTRACTOR be entitled to receive more than the amount that would be paid to CONTRACTOR for the full performance of the services required by this Agreement. CONTRACTOR 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 CONTRACTOR with all pertinent data, documents, and other requested information as is available for the proper performance of CONTRACTOR'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 CONTRACTOR and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONTRACTOR 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 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 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 CONTRACTOR.

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 _____ 2016, 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
City Clerk

[Signatures continue]

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

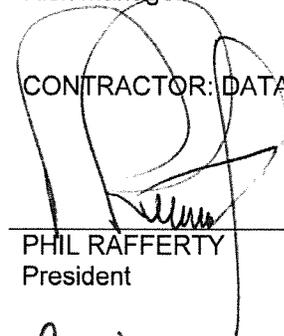


GEORGE CHAVEZ
Assistant City Manager/Director of Public Works
Services



KARL KIRKMAN
Risk Manager

CONTRACTOR: DATA SPECIALITIES, INC.



PHIL RAFFERTY
President



RIC MAXON
Vice President/CFO

EXHIBIT A

SCOPE OF WORK

CONTRACTOR shall provide preventative maintenance services in accordance with all applicable state, federal and local laws, codes and regulations to the CITY Uninterruptable Power Supply (UPS) systems listed in the table below, according to the rates listed in Exhibit B. Such service shall include periodic assessments of devices and electrical operations to ensure that system reliability. CONTRACTOR shall replace end-of-life batteries for UPS devices.

Facility	Address
Beverly Hills Police Department	464 N Rexford Drive
Beverly Hills Information Technology Department	444 North Rexford Drive
Reservoir No. 7	405 N Walker Drive
Bedford Parking Structure	461 N Bedford Drive
La Cienega Tennis Center	321 S La Cienega Blvd
Roxbury Park Community Center	471 S Roxbury Dr
Crescent Parking Structure	221 N Crescent Dr

As-Needed Services

CONTRACTOR shall provide additional as-needed services related to the UPS system technical support, repair, replacement and preventative maintenance. Such as-needed services shall apply to the devices and locations listed above as well as any UPS system devices or components within the CITY's Municipal Area Network (MAN).

Upon CITY's request, each engagement for these as-needed services for will be set forth in writing in an executed Individual Project Order (IPO) to be approved by the CITY in writing before any work, billing, or demand for payment will we initiated. Each IPO shall contain an estimated cost for the project along with a Not-to-Exceed amount which shall include all labor and expenses. If the scope of the engagement changes or the cost of the engagement will exceed the Not-to-Exceed amount, then the CONTRACTOR shall obtain written permission or an amendment to the IPO.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

CITY shall compensate CONTRACTOR for the satisfactory performance of the work described in this Agreement in a total amount not to exceed Two Hundred Thousand Dollars (\$200,000.00) based on the rates set forth in this Exhibit.

Category	Straight Time	Time & a Half	Double Time
Periodic Assessment	\$116.00/hr.	\$144.00/hr.	\$175.00/hr.
Battery Replacement	\$351.00/hr.	\$448.00/hr.	\$559.00/hr.
Preventative Maintenance			
UPS System	\$351.00/hr.	\$448.00/hr.	\$559.00/hr.
Mechanical System	\$188.00/hr.	\$254.00/hr.	\$312.00/hr.
Generator System	\$156.00/hr.	\$234.00/hr.	\$312.00/hr.
ATS System	\$195.00/hr.	\$293.00/hr.	\$390.00/hr.
Pre-Action System	\$189.00/hr.	\$254.00/hr.	\$332.00/hr.
Leak Detection System	\$163.00/hr.	\$228.00/hr.	\$293.00/hr.

1. Straight Time Rate – Weekdays, 7:00 AM to 3:30 PM

- a. Service calls: Include travel one direction with a four hour minimum.
- b. Installations (Time and Material): Less than one day, includes travel one way with a four hour minimum.
- c. If agreed upon with CITY for a particular day, the start time may be adjusted to 5:00 AM or 6:00 AM as necessary.

2. Time and One-Half Rate

- a. Any work between 3:30 PM and 7:30 PM weekdays, including travel to and from job with a four hour minimum.
- b. Any work Saturday, 7:00 AM to 3:30 PM, including travel to and from job with a four hour minimum.

3. Double Time Rate

- a. Any work any day, 7:30 PM to 7:00 AM, including travel to and from job with a four hour minimum.
- b. Any work on Saturday between 3:30 PM and 12:00 Midnight, including travel to and from job with a four hour minimum.
- c. All work on Sunday and holidays, any hours, including travel to and from job with a four hour minimum.

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. CITY shall pay CONTRACTOR the undisputed 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"/> CONTRACTOR'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: 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 : _____
