

**AGREEMENT WITH KOFFLER ELECTRICAL MECHANICAL
APPARATUS REPAIR, INC. dba KEMAR
FOR CONTRACTUAL SERVICES
FOR
MARINA LAGOON PUMP OVERHAUL**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **KOFFLER ELECTRICAL MECHANICAL APPARATUS REPAIR ,INC. dba KEMAR**, ("CONTRACTOR"), a California Corporation, whose address is 527 Whitney Street, San Leandro, CA 94577.

RECITALS:

- A. CITY desires certain PUMP OVERHAUL services hereinafter described.
- B. CITY desires to engage CONTRACTOR to provide these PUMP OVERHAUL services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - DUTIES OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to perform the services of CONTRACTOR.

CONTRACTOR and his subcontractors shall comply with State's Prevailing Wage Laws.

CONTRACTOR agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

CONTRACTOR or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. For the work performed for the City, the CONTRACTOR and his subcontractors shall pay the workers at the prevailing wage rate as determined by the California Department of Industrial Relations, for this locality. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project. CITY shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on October 1, 2019 and be completed by July 30, 2023

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONTRACTOR in an amount of \$466,400, a fee pursuant to rates stated in Exhibit B, attached and incorporated by reference.

SECTION 6 – TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are confidential until released by CITY to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONTRACTOR

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONTRACTOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of this Agreement, except for those claims arising out of CITY's sole negligence or willful misconduct. CONTRACTOR agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

Contractor shall procure and maintain for the duration of the contract the insurance specified in Exhibit C to this Agreement.

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is skilled in the performance of the work agreed to be done under this Agreement and that CITY relies upon the skill of CONTRACTOR to do and perform the work in the most skillful manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by CITY does not operate as a release of CONTRACTOR from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - NON-DISCRIMINATION

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONTRACTOR shall testify at CITY's request if litigation is brought against CITY in connection with CONTRACTOR's services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR's wrongdoing, CITY shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR's standard hourly rates at the time of actual testimony.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY:	Tony Baltodano Field Maintenance Manager 330 W. 20 th Avenue San Mateo, CA 94403
To CONTRACTOR:	Maya Hetrick Koffler Electrical Mechanical Apparatus Repair Inc., dba KEMAR 527 Whitney Street San Leandro, CA 94577

SECTION 21 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONTRACTOR.

SECTION 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and KOFFLER ELECTRICAL MECHANICAL APPARATUS REPAIR, INC. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONTRACTOR

Brad B. Underwood
Public Works Director

Charles A. Koffler, CEO
Koffler Electrical Mechanical Apparatus
Repair, Inc.

APPROVED AS TO FORM

Caio Arellano
Assistant City Attorney

Attachments:

Exhibit A: Scope of Services
Exhibit B: Payment Rates
Exhibit C: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Contractor shall provide all services required to remove, repair, refurbish, reinstall and ensure equipment is functioning in a stable and effective manner before returning operations to the City; Three (3) Storm Patterson vertical 72x72 AFV pumps; and one (1) storm Patterson vertical 48x48 AFV pump with a Seimens-Allis 200 HP motor. Accordingly, the following is intended only as a guide.

Contractor will perform all tasks necessary to restore pumps to like-new condition and ensure stable operation as a condition of project close. The work will be completed at the rate of one (1) pump per fiscal year (July – June). The three 72x72 pumps will be completed first, followed by the 48x48 pump in the final year. Annual project may include the following tasks and procedures:

Removal

- Remove 72" dresser type coupling from discharge pipe of pump inside of wet well. Bolts and 72" coupling band; may have to be cut off to remove.
- Lift out pump using pump station overhead crane. Vendor to provide proper capacity lifting slings and shackles.
- Attach pump to 30-ton hoist (Pump weight 46,000 LBS approx.).
- Lift pump out of wet well.
- The 20 Ton hoist will be used to lift bottom end of pump at the suction bell area to assist in bringing the pump to a horizontal position. Vendor to provide lifting slings for bottom end of pump.
- Move pump to horizontal position at the truck loading bay door and load onto a low bed truck/Trailer.
- Obtain A 10-foot-wide/oversize permit to transport pump to and from Lagoon pump station.
- Obtain a confine space entry permit and furnish equipment needed to enter the wet well.
- Provide transportation of pump, gearbox, and driveline.
- Provide oversize transportation permit for pump.
- Remove driveline guard and driveline from diesel engine to gearbox.
- Coordinate with City who will perform all necessary tasks to Lock out/Tag out pump and engine, install safety barriers around pump opening, disconnect battery connections to the engine, turn off the main breakers, drain the existing gear oil in advance of gear box remove, provide gear oil for reassembled gear box, provide grease for the pump once ready for assembly, and other heretofore undetermined tasks that must needs be performed by the City to enable Contractor to fulfill it's various requirements.
- Transport driveline to shop.
- Electrically disconnect and unbolt grease pump unit and set aside in designated staging area.
- Disconnect waterlines, mounting bolts and pump coupling bolts.
- Take an as found measurement between the coupling faces.
- Remove gearbox from pump using pump station overhead crane.
- Provide proper capacity lifting slings (Gearbox weight 3800 LBS approx.).
- Transport gearbox to shop.

- Inspect gearbox by draining the oil at the shop and have the gears box inspected by removing all bolts and nuts from the gear box, inspect the gears, replacing the lip seals where needed, replacing gasket between faces of gear box, and reassembling the gear box.
- Notify City in a timely manner if additional repairs will be needed on gears and provide recommendation.

Rebuild

- Power wash outside of pump.
- Metal stamp mark each part of pump to insure each column, suction bell, defuser, and mounting base fits match up during reassembly of pump.
- Fully disassembled pump.
- Photo document during disassembly of pump.
- All pump columns and discharge column to be sandblasted.
- Inspect condition of metal on columns after sandblasting.
- Preheat columns and apply Belzona 1321 liquid steel to feel any large divots caused by rust. Then apply two-part epoxy painted Amer lock 400 to all columns, suction bell, defuser, discharge column and underside of mounting base.
- Remove Qty. (3) spider lube pipe guide bars on mid column and replace with new.
- Replace Qty. (3) stainless steel (S/S) shafts and Qty. (6) brass bushings. Replace (3) lip seals at defuser bushing and suction bell bushing.
- Clean, inspect, and re-balance pump impeller, reassemble pump with S/S hardware, torque all S/S bolts to specification.
- Pre-lubricate all bushings during assembly with supplied grease from the city representative.
- Install new packing at top packing gland, paint top of pump with two-part light gray epoxy paint.
- Photo document during reassembly of pump.
- Rebuild the 200HP motor in the electric pump.
- Throughout the overhaul process, keep detailed written notes of the condition of pump and components and provide a condition report to city representative upon completion. The report should include detailed description of inspection findings, steps taken to repair and refurbish pump (replacing parts, retooling, etc), and recommendations for monitoring and future maintenance.

EXHIBIT B

PAYMENT RATES

Three (3) Storm Patterson vertical 72x72 AFV pumps: \$115,400.00 per pump

One (1) storm Patterson vertical 48x48 AFV pump with a Seimens-Allis 200 HP motor: \$120,200.00

EXHIBIT C

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.