

MEMORANDUM

TO: Board of Trustees

THROUGH: Brad Underwood, Director of Public Works

FROM: Jim Youngblood, Utilities Superintendent

SUBJECT: Review, Discuss and Possibly Approve a Purchase Order Service Agreement with Thunderbird Communications for a 2-year Maintenance Contract (Requesting Staff Member: Director of Public Works Brad Underwood)

RELATED STRATEGIC PLAN BUDGET INITIATIVE(S): **LONG RANGE PRINCIPLE #5 – ASSETS AND INFRASTRUCTURE**

The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation venues, facilities, and services.

Strategies

- Maintain, renew, expand and enhance District infrastructure to meet the capacity, needs and desires of the community for future generations.
- Maintain, procure and construct District assets to ensure safe and accessible operations for the public and District's workforce.
- Comply with regulatory requirements, industry standards, and District policies.

RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES

Capital Planning Multi-Year Capital Planning Policy 12.1.0; Capital Planning Capital Project Budgeting Policy 13.1.0; Capital Planning Capital Expenditures Practice 13.2.0; Purchasing Policy for Goods and Services Policy 20.1.0; Board Policy 3.1.0. , 0.4 Consent Calendar

DATE: June 14, 2023

I. RECOMMENDATION

1. Approve a Purchase Order Service Agreement with Thunderbird Communications for a 2-year Maintenance Contract in the amount of \$57,600.
2. Authorize the Director of Public Works to execute the contract in substantially the form presented.

II. BACKGROUND

Thunderbird Communications (Contractor) built the District's original SCADA system. The Contractor has performed maintenance on the District's SCADA system and control programming at all of the water and wastewater locations the past several years. The Contractor performs work either on-site or via phone, as appropriate, and provides remote access support and any off-line programming as requested by IVGID and/or suggested by the Contractor with IVGID's approval. Contractor's services include:

- Sixteen hours on-site are included each month. The Contractor will perform work as requested by IVGID, or as recommended by the Contractor. In either case, any tasks to be performed will be disclosed to IVGID personnel prior to commencement.
- Off-site service may be included in place of on-site service, when appropriate and approved by IVGID. This service includes phone support, remote access support, and off-line programming, and would generally be provided for small changes or emergencies, or when off-site programming is practical for the Contractor and IVGID.

In accordance with Board Policy 3.1.0, 0.15 Consent Calendar, this item is included on the Consent Calendar as it is routine business of the District and within the currently approved District Budget.

III. BID RESULTS

The Districts Purchasing Policy for Goods and Services - Policy 20.1.0 section 2.2.7 Purchase of Professional Services states, "Contracts for professional services where highly specialized knowledge or technical knowhow is required are not always adapted to award by competitive solicitation. District staff shall evaluate each purchase of professional services to determine whether a competitive solicitation process would serve the best interests of IVGID or whether such a process would be impractical."

The Contractor installed the District's SCADA system and knows the system intimately. It is prudent that this contractor continue servicing the District's

SCADA system.

The Districts' purchase of their services is exempt from competitive bidding for the following Nevada Revised Statute reasons:

1. This purchase is for services which may only be contracted from a sole source (NRS 332.115.1.b), professional services.
2. This purchase is for additions to and repairs and maintenance of equipment which may be more effectively added to, repaired or maintained by a certain person (NRS 332.115.1.c).
3. The equipment and professional service proposed for purchase, by virtue of the training of the personnel or of any inventory of replacement parts maintained by the local government, is compatible with existing equipment (NRS 332.115.1.d).

IV. FINANCIAL IMPACT AND BUDGET

This is Purchase Order Agreement for services funded through the water and sewer fund operating budgets for \$35,000 and \$22,600 respectively for the two-year contract.

V. ALTERNATIVES

Not approve the Purchase Order Service Agreement for Thunderbird Communication and allow the District's SCADA system to not be maintained.

VI. COMMENTS

The Professional Services Agreement has been reviewed and approved substantially to form by District Legal Counsel.

VII. BUSINESS IMPACT/BENEFIT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

These services will allow staff to work with the consultant on needs to modify, improve or enhance the SCADA system for effective and efficient operations.

VIII. ATTACHMENTS

1. Attachment A - Purchase Order re Services - Thunderbird Communications_Maintenance Contract

IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

1. Approve a Purchase Order Service Agreement with Thunderbird Communications for a 2-year Maintenance Contract in the amount of \$57,600.
2. Authorize the Director of Public Works to execute the contract in

substantially the form presented.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT – PURCHASE ORDER (SERVICES)

Account No. 7330 20002222- 7515 and 7510 20002522- 7515	Req. No.	Purchase Order No. Order Date: July 1, 2023 Delivery By: June 30, 2025 Buyer: Jim Youngblood Phone Number: 775-832-1214 E-mail: jey@IVGID.org	Remit to: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
CONTRACTOR <u>Thunderbird Communications, Inc.</u> <u>1664 Auburn Ravine Road</u> <u>Auburn, CA 95603</u> <u>Attn: Tom Swick</u>		INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT	

This Purchase Order is subject to the attached terms and conditions.

Services:

This PURCHASE ORDER (SERVICES) is for performing maintenance on our existing SCADA system and control programming at all of the water and wastewater locations. Contractor agrees to perform work either on-site or via phone, as appropriate, and to provide remote access support and any off-line programming as requested by IVGID and/or suggested by Contractor with IVGID's approval. Contractor's services are further described in Exhibit A to this Purchase Order, incorporated herein by this reference.

OWNER:
Incline Village G.I.D.
Agreed to:


CONTRACTOR:
Thunderbird Communications, Inc.
Agreed to:

By: _____
Brad B. Underwood, P.E.
Director of Public Works

By:  _____
Signature of Authorized Agent

 _____
Print or Type Name and Title

Date

 _____
Date

Reviewed as to Form:

Joshua Nelson
District General Counsel

If Contractor is a corporation, attach evidence of authority to sign.

Date

PURCHASE ORDER TERMS AND CONDITIONS FOR SERVICES

1. Acceptance; Entire Agreement. This purchase order for services issued by the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (“DISTRICT”) to the Contractor designated in the purchase order must be promptly accepted and acceptance is expressly limited to the terms of this order. Any addition or different terms in the Contractor's forms are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Contractor's performance of any portion of this order shall be considered acceptance by the Contractor of the terms herein.

2. Compensation. Contractor shall be paid on a fixed fee basis, as agreed upon by the parties and as set forth in Exhibit A attached hereto and hereby made a part hereof, within 30 days of receipt of invoice. Each invoice will include a summary of service provided by Contractor for that month, and the cumulative total of off-site services provided and purchased for the entire period of the contract until that point. If the number of hours of service provided by Contractor surpasses the number of hours purchased, additional hours will be charged at a rate of \$150. No off-site service in excess of the contracted for amount shall occur without prior written approval of DISTRICT.

3. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government. DISTRICT shall assist Contractor, as requested, in obtaining and maintaining all permits required of Contractor by Federal, State and local regulatory agencies. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her work.

4. Standard of Care. The Contractor shall perform the work in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing under similar conditions. Contractor shall also comply with State and Federal environmental and safety regulations as they apply to the scope of work.

5. Insurance. Contractor shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, naming DISTRICT as an Additional Insured; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per occurrence for bodily injury and property damage; C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Contractors providing professional services shall provide Professional Liability (Errors and Omissions) Insurance of at least \$1,000,000. Insurance carriers shall be licensed or authorized to do business in Nevada.

6. Indemnification. The Contractor shall indemnify and hold harmless DISTRICT, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of the Contractor or a subcontractor for wages or benefits which arise in connection with the performance of the Contract, except to the extent caused or resulting from the active or sole negligence or willful misconduct of DISTRICT.

The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to DISTRICT and DISTRICT's attorneys' fees incurred in such an action. If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of “design professional” services subject to NRS 338.155, then, and only to the extent required by NRS 338.155, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or its employees and agents. Moreover, while Contractor shall not be required to initially defend the District, Contractor, if adjudicated to be liable by a trier of fact, the Contractor shall be reimburse the District or the attorney's fees and costs incurred by the District defending the action in an amount which is proportionate to the liability of the Contractor.

9. Contract Terms. Nothing herein shall be construed to give any rights or benefits to anyone other than DISTRICT and the Contractor. The unenforceability, invalidity or illegality of any provision(s) of this Contract shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the parties to the addresses set forth in the purchase order. Contractor shall not assign, sublet, or transfer this Contract or any rights under or interest in this Contract without the written consent of DISTRICT, which may be withheld for any reason. Contractor is retained as an independent contractor and is not an employee of DISTRICT. No employee or agent of Contractor shall become an employee of DISTRICT. This is an integrated Contract representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. This Contract may not be modified or altered except in writing signed by both parties hereto.

10. Notice of Labor Dispute. Whenever Contractor has knowledge that an actual or potential labor dispute may delay performance under this purchase order, Contractor shall immediately notify and submit all relevant information to DISTRICT.

11. Changes. By written notice, DISTRICT may from time to time, direct work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, methods of shipment and packaging, and property and services furnished to DISTRICT by Contractor. If such change causes an increase or decrease in the price of this purchase order or in the time required for performance, Contractor or DISTRICT shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse the Contractor from proceeding immediately with the purchase order as changed.

12. Obligations. Contractor shall be solely responsible for providing all materials, labor, tools, equipment, water, light, power, transportation, superintendence, and temporary construction of every nature and all other services and all facilities necessary to execute, complete, and deliver the work within the specified time.

13. Damage to District Facilities. Damage to DISTRICT or public facilities or private property caused by the Contractor or by its subcontractors during performance of services shall be repaired and/or replaced in kind at no cost to the DISTRICT.

14. Site Safety and Cleanup. The project site shall be kept clean and free of hazards at all times during performance of services. After and installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

15. Installation. If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the DISTRICT.

**EXHIBIT A
CONTRACTOR’S SCOPE OF SERVICES**

Thunderbird Communications, Inc. (“Contractor”) hereby agrees to provide the following services:

- Sixteen hours on-site are included each month. The Contractor will perform work as requested by IVGID, or as recommended by the Contractor. In either case, any tasks to be performed will be disclosed to IVGID personnel prior to commencement.
- Off-site service may be included in place of on-site service, when appropriate and approved by IVGID. This service includes phone support, remote access support, and off-line programming, and would generally be provided for small changes or emergencies, or when off-site programming is practical for the Contractor and IVGID. All telephone support will be tracked in thirty-minute increments and will be cumulative throughout the period of the maintenance contract.
- On-site service will be cumulative, so if less than sixteen hours are provided during one month, more than sixteen hours may be provided in the following months.
- During emergencies, the Contractor shall be available for telephone support within two hours via business telephone, home telephone, cellular phone, and email.

PRICING:

The below is based on the Parties’ understanding at the time of contracting, and may be adjusted by mutual written, signed agreement of the Parties as appropriate.

Description	Quantity	Unit	Unit Price	Total
Maintenance Contract	24	Monthly	\$2,400	\$57,600