

SECTION 00500
AGREEMENT
BETWEEN THE OWNER AND CONTRACTOR

THIS AGREEMENT is by and between City of Gillette (OWNER) and _____ (CONTRACTOR).

Owner and Contractor, in consideration of the mutual covenants set forth herein agree as follows:

ARTICLE 1 -- WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Move existing 80' self-supporting Rohn tower from City West to Red Hills Water Tank and erect tower.

Conduct soil sample study and provide results.

Demo existing 80' tower at City West, move to Red Hills and re-erect tower.

Use new tower anchors and tower section bolts.

Install concrete foundation for tower.

Provide project management, including all permits and facility locates.

Demo existing ice bridge and reconstruct ice bridge at new tower site.

FAA/FCC Filing for tower approval.

Materials to be provided include:

Anchor bolts and templates

Install new Rohn approved or supplied Safe Climb device (80')

One (1) 5' x 5/8" lightning rod copper clad

Install proper grounding for the tower per manufacturers recommendation or specifications.

P.E. certified tower profile and foundation drawings

Final erection drawings

ARTICLE 2 -- THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only part is generally described as follows:

WATER - RED HILLS RADIO TOWER MOVE
17SC10

ARTICLE 3 -- ENGINEER

3.01 (NOT USED)

ARTICLE 4 -- CONTRACT TIME

4.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. When the contract time is on a working day basis, the contract time will begin on the date determined in the Notice to Proceed and continue at the rate of one Working Day charged for each day of the Normal Working Week, except as described otherwise in the Supplementary Conditions or Project Documents, until the work is complete. Working Day contracts do not include an initial allowance for adverse weather days and do not charge a working day for adverse weather days.

4.02 Days to Achieve Substantial Completion and Final Payment.

A. The Work will be substantially completed within 145 (working) days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 160 (working) days after the date when the Contract Times commence to run, but not later than (insert completion date).

4.03 Liquidated Damages

A. The Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed, in accordance with Article 12 of the General Conditions. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$300.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 -- CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds according to the Bid, which is attached as an Exhibit.

ARTICLE 6 -- PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment, in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.

6.02 Progress Payments

A. Owner shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment, as recommended by the Engineer, subsequent to the second Council meeting of each month during construction, as provided below. All such payments will be measured by the schedule of values established in Paragraph 2.07.A of the General Conditions, (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as the Engineer determines or the Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

a. Ninety percent (90%) of the Work completed (with the balance being retainage). If the Work has been fifty percent (50%) completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to the OWNER and the ENGINEER, the OWNER, on recommendation of the ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage;

b. Ninety percent (90%) of the materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

6.03 Final Payment.

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07, on the forty-first (41st) day of the publishing of the Notice of Acceptance.

ARTICLE 7 -- INTEREST

7.01 All moneys not paid when due, as provided in Article 14 of the General Conditions, shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 8 -- CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedure of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedure of construction expressly required by the Bidding Documents, and safety precautions and programs incident hereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be preformed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 -- CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consists of the following:

1. This Agreement (pages 24 to 30, inclusive).
2. Performance bond (pages 37 to 40, inclusive).
3. Payment bond (pages 33 to 36, inclusive).
4. Notice of Award (page 41 to 42, inclusive).
5. General Conditions (pages 00700-0 to 00700-41, inclusive).
6. Supplementary Conditions (pages 35 to 50, inclusive).
7. Specifications bearing the title The City of Gillette, Standard Construction Specifications, as amended.
8. Drawings consisting of ____ sheets with each sheet bearing the following general title: (not used)
9. Project Manual bearing the title WATER - RED HILLS RADIO TOWER MOVE – 17SC10
10. Addenda (pages 1 to ____, inclusive).
11. Exhibits to this Agreement (enumerated as follows):

- a. Contractor's Bid (pages 1 to ____, inclusive).
- b. Documentation submitted by Contractor prior to Notice of Award (pages 1 to ____, inclusive).
- c. _____.

12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed (pages 1 to ____, inclusive).
- b. Work Change Directives.
- c. Change Order(s)

B. The documents listed in Paragraphs 9.01.A are attached to this Agreement, (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented, as provided in Paragraphs 3.04 of the General Conditions.

ARTICLE 10 -- MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and the Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

10.05 Other Provisions

IN WITNESS WHEREOF, Owner and Contactor have signed this Agreement in duplicate. One counterpart each has been delivered to the Owner and the Contractor. All portions of the Contract Documents have been signed or identified by the Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement)

OWNER:

CONTRACTOR:

City of Gillette

By: _____

By: _____

Title: Mayor

Title: _____

[Corporate Seal]
(If Available)

Attest: _____

Attest: _____

Title: City Clerk

Title: _____

Address for giving notices:

Address for giving notices:

City of Gillette
PO Box 3003
Gillette, WY 82717

License No.: _____

Agent for service or process: _____

(If Contractor is a corporation
or partnership, attach evidence of authority to
sign.)