



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 11-19

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of the tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education, and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Tribe is a federally recognized Indian Tribe possessing reserved power, including powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the land and treaty resources of the Tribe; and

WHEREAS, Staff has negotiated the terms of the contract for the Comprehensive Tribal Facilities Energy Audit Project with RIDOLFI, Inc. ("Contractor"), as evidenced in the attached Contract; and

WHEREAS, in order to induce Contractor to complete and execute the agreement for Consulting Services and perform the same, it is necessary for the Tribal Council to ratify and approve the terms and conditions of the Agreement for Consulting Services; authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; to consent that the Tribe be sued in Tribal Court with respect to claims for payment under the Contract.

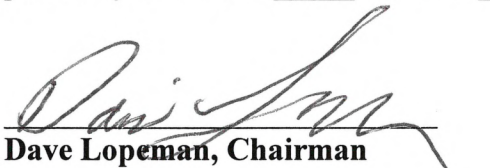
NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby agrees to enter into the attached Contract.

THEREFORE BE IT FURTHER RESOLVED, that the Tribal Council specifically limits its waiver of sovereign immunity for the purposes of this Contract to the limited waiver as stated on pages 3-4 of the Contract; and

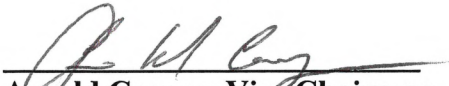
NOW THEREFORE BE IT FINALLY RESOLVED, that the Tribal Council hereby authorizes Don Whitener to do any and all accounts necessary to effect execution of the Contract.

CERTIFICATION

The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted ^{via phone poll} ~~at the regular meeting~~ of the Squaxin Island Tribal Council, held on this 28 day of March 2011, at which time a quorum was present and was passed by a vote of 4 for and 0 against with 0 abstentions.


Dave Lopeman, Chairman

Attested by: 
Pete Kruger Sr., Secretary


Arnold Cooper, Vice Chairman

Form approved by Tribal Council ___/___/___
Initial if Tribal Council review of content requirement met ____
Initial if competitive bid requirement met ____
Initial if cost-review requirement met ____
Initial if Finance Department/CFO review requirement met ____
Initial if Legal Dept. review requirement met ____
Other review: _____

**CONTRACT
FOR GOODS AND/OR SERVICES**

This Contract is entered into on the Squaxin Island Reservation this 1st day of April, 2011, between RIDOLFI Inc., with a principal place of business at 1011 Western Avenue, Suite 1006, Seattle, WA 98104-1085, hereafter referred to as the “Contractor”, and the Squaxin Island Tribe, a federally-recognized Tribe (hereafter the “Tribe”), located on the Squaxin Island Reservation at Shelton, Washington. This Contract consists of this written agreement and all attached “Contract Documents” described in Section 7 of this Contract.

1. Description of Goods and/or Services

Contractor shall provide the goods and/or services described in the attached “Exhibit A”, in accordance with this Contract and Contract Documents.

2. Contract Price

2.1 The Tribe agrees to pay Contractor for the goods and/or services the price described in “Exhibit A”. Payment of this amount is subject to additions or deductions in accordance with the provisions of this Contract.

2.2 Payment shall be as set out in Section 3 of this Contract.

3. Method of Payment

3.1 The Tribe shall make payments to Contractor on the following basis (select one option):

____ Option 1: 100% upon delivery of conforming goods and/or services.

X Option 2: In accordance with the payment schedule attached as “Exhibit B”.

3.2 Any payment to be made under either Option 1 or Option 2 above may be withheld if:

3.2.1 The goods and/or services are found to be defective and the defect is not remedied;

3.2.2 In the opinion of the Tribe, Contractor’s performance is not consistent with the terms of this Contract; or

3.2.3 Contractor fails to comply with any applicable law or regulation, or to pay any applicable tax, fee or license.

4. Claims

4.1 By making payment, the Tribe waives all claims except those arising out of:

4.1.1 Faulty goods and/or services appearing after delivery or completion;

- 4.1.2 Goods or services that do not comply with the Contract documents;
- 4.1.3 Outstanding claims of liens;
- 4.1.4 Failure of Contractor to comply with any special guarantees or warranties required by the Contract Documents.

4.2 Contractor, by accepting payment, waives all claims against the Tribe as to those goods and/or services except those that he or she has previously made in writing, and which remain unsettled at the time of acceptance.

5. Starting and Completion Dates

This Contract shall be effective on April 1, 2011, and shall automatically terminate on August 20th, 2011 unless renewed or extended in writing by both parties.

6. Default and Termination

6.1 This Contract may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Contract. The non-defaulting party shall give the defaulting party ten (10) days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party. Should the defaulting party be Contractor, the Tribe may, pursuant to Section 3 of this Contract, withhold any portion of the Contract Price still owing at the time of the default.

6.2 The Tribe may also terminate this Contract for its convenience without cause. Should the Tribe elect to terminate under this subsection 6.2, the Tribe shall give the Contractor written notice of the termination, which shall be effective immediately upon receipt, or three days after mailing, first-class, postage prepaid, whichever comes first, unless a later termination date is given. The Tribe shall pay for all goods and/or services properly provided up to the effective date of the termination. Contractor shall have no additional rights as against the Tribe except for the payment provided under this subsection 6.2.

7. Contract Documents

The Contract Documents on which the Contract is based are as follows: this Contract, together with such supplementary agreements and conditions as are attached to this Contract, and which are labeled as Exhibits to this Contract. The Contract Documents together form the Contract for the goods and/or services herein described. In the event of a conflict between this Contract and any document attached to it, the terms of this Contract govern.

8. Contract Officer

8.1 Tracy Parker is the designated Contract Officer (CO) for the purpose of this Contract and shall provide general administration of the Contract as the Tribe's representative.

8.2 Bruno Ridolfi is Contractor's representative for this Contract, and shall be responsible for the performance of this Contract, and shall have signature authority for the Contractor for all matters related to this Contract.

9. Responsibilities of Contractor

Contractor's duties and rights in connection with the project herein are as follows:

9.1 Payment of Taxes, Procurement of Licenses and Permits: Contractor shall pay any applicable tribal, federal, state, and local taxes required by law in connection its performance under this Contract and shall secure all necessary licenses and permits, paying the fees therefore.

9.2 Compliance with Laws and Regulations: Contractor shall comply with all applicable laws and ordinances, and rules, regulations, or orders of all public authorities relating to the performance of this Contract. If any of the Contract Documents are at variance therewith, he or she shall notify the Contract Officer promptly upon discovery of such variance.

9.3 Responsibility for Negligence of Employees and Subcontractors: Contractor assumes full responsibility for negligent acts or omissions of all its employees under this Contract, for those of its subcontractors and their employees, and for those of all other persons doing work under contract with it.

9.4 Warranty of Fitness of Goods and/or Services: Contractor represents and warrants to the Tribe that goods and/or services provided under this Contract will be of good quality, free of defects, and in conformity with the Contract Documents. It is understood between the parties hereto that all goods and/or services that are not so in conformity are defective.

9.5 Indemnity and Hold Harmless Agreement: Contractor agrees to indemnify and hold harmless the Tribe, its subsidiaries, and the officers, agents and employees of each, from and against all claims, damages, losses, and expenses related to or arising from Contractor's negligent acts or omissions as set out in this Contract. Such expenses include reasonable attorneys' fees if it is necessary for the Tribe to commence or defend an action arising out of or associated in any way with Contractor's negligent performance of this Contract. Such claims include, but are not limited to, claims for bodily injury, illness or death, property damage (including loss of use, or other damage) which are caused in whole or in part by Contractor's negligent act or omission, or that of Contractor's subcontractor, or that of anyone employed by them or for whose acts Contractor or Contractor's subcontractor may be liable.

10. Jurisdiction and Venue; Applicable Law; Sovereign Immunity

10.1 Contractor and the Tribe agree that the sole and exclusive jurisdiction over any disputes arising out of this Contract shall be in the Squaxin Island Tribal Court.

10.2 Any dispute shall be determined under the laws of the Squaxin Island Tribe.

10.3 Nothing herein shall be deemed to waive the sovereign immunity of the Tribe, the Squaxin Island Tribe, or its enterprises, agents, or employees, except as explicitly provided in Subsection 10.4 below.

10.4 Limited Waiver of Sovereign Immunity: The Tribe grants a limited waiver of its sovereign immunity from suit in favor of Contractor. The waiver is limited as follows:

10.4.1 The waiver applies solely to claims for payment under this Contract. Any monetary recovery under the waiver shall not exceed the total contract price of \$39,500.

10.4.2 The waiver extends solely to the jurisdiction of the Squaxin Island Tribal Court.

10.4.3 The waiver is granted solely in favor of Contractor. There are no third party beneficiaries to this waiver of sovereign immunity, and the Tribe shall have no liability for any action of any third party.

11. Independent Contractor

It is understood that the Contractor is operating as an independent contractor, and as such shall comply with all applicable laws and regulations and shall pay all applicable taxes and other assessments and hold the Tribe harmless from the consequences of any act or omission of whatever kind or nature of Contractor or its employees or agents of whatever kind. Contractor shall not have any right as an employee of the Tribe, and no employee-employer relationship is established by this Contract. Further, the Contractor is responsible for reporting this income to the applicable federal and/or state agencies. The Contractor is responsible for all taxes associated with this income.

12. Insurance

Contractor shall provide and continuously maintain in effect during the term of this Contract general liability insurance, naming the Tribe as an additional insured, in the amount of no less than \$1,000,000 per occurrence. Contractor shall furnish the Tribe with a certificate of insurance prior to beginning any work under this Contract.

13. Records

Contractor will maintain adequate financial records, in accordance with generally accepted accounting practices, such that the Contractor can clearly and easily identify all claimed costs and expenses and the relatedness of the those costs and expenses to this Contract.

14. Certification of Non-Segregated Facilities

By signing this Contract, Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of Contractor's establishments, and that Contractor's employees are not permitted to perform their services at any location, under this Contract, where segregated facilities are maintained. Contractor agrees that failure to abide this certification is a breach of this Contract.

15. Non-Discrimination

Title VI of the Civil Rights Act of 1964, (Public Law 88-352; 42 USC 200d-1) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

16. Entire Agreement; Amendments

This Contract contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof.

17. Severability

If any part of this Contract is held unenforceable, the rest of the Contract will continue in effect.

18. No Partnership

This Contract does not create a partnership relationship. Contractor does not have authority to enter into contracts on the Tribe's behalf.

19. Assignment

(Check applicable provision.)

_____ Either Contractor or the Tribe may assign or subcontract any rights or obligations under this Contract.

OR

X Contractor may not assign or subcontract any rights or obligations under this Contract without the Tribe's prior written approval.

20. Tax Exemption

The Tribe is exempt from state taxes for goods and services received in Indian Country as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, certain excise taxes, and others. Contractor is eligible for an exemption from state taxes for goods and services provided to the Tribe in Indian Country, as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, Business & Occupation tax, and others. Contractor shall comply with WAC 458-20-192 to perfect the exemption from state taxation.

21. Execution

(Check applicable provision.)

X The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Signatures transmitted by facsimile shall have the same effect as original signatures.

OR

_____ This Agreement shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract at the Squaxin Island Reservation, Shelton, Washington, on the date herein indicated.

DATE: _____

SQUAXIN ISLAND TRIBE

By: Don Whitener
Title: Tribal Administrator
Address: 10 SE Squaxin Lane, Shelton, WA
98584
Telephone: (360)426-9781
Facsimile: (360) 426-6577

DATE: _____

CONTRACTOR

By: Bruno Ridolfi
Title: Vice-President
Address: 1011 Western Avenue, Suite 1006,
Seattle, WA, 98104
Telephone: (206)682-7294
Facsimile: (206)682-5008
Taxpayer I.D.: 91-1864002

EXHIBIT A

**DESCRIPTION OF GOODS AND/OR SERVICES
AND PRICE**

See “Attachment A” (Ridolfi Technical Proposal) for Goods and Services to be provided by Ridolfi Inc. under this agreement. The Contractor shall carry out the scope of project in accordance with the attached Ridolfi Technical Proposal (“Attachment A”) to conduct a Comprehensive Energy Audit of Campus Facilities located on the Squaxin Island Indian reservation and as stipulated in the attached RFP, “Attachment A.1”

This project is funded through the Department of Energy EECBG recovery act funds. Recipients and sub-recipients must comply with the terms and conditions that were specified under the RFP (Request for Proposals) published on February 4, 2011. These special terms and conditions will be based on provisions included in Titles XV and XVI of the Act. These Special Provisions are located at:
http://management.energy.gov/business_doe/business_forms.htm

EXHIBIT B

PAYMENT SCHEDULE

Payments made under this contract will be in accordance with the Schedule of Pay Points listed below. Invoices for progress payments shall be itemized and submitted based on successful completion of each Task and Subtasks (Subtasks 1.1, 1.2., 1.3, 1.4 and Tasks 2 and 3) as indicated in the Schedule of Pay Points below. Payment shall be issued upon successful delivery of the following tasks:

Schedule of Pay Points

Line Item/Deliverable	Budget/Fixed Price
Task 1: ASHRAE Level 2 Energy Audits	
Sub-task 1.1: Baseline Energy Use Analysis	7,000
Sub-task 1.2: On-Site Energy Audits	9,000
Sub-task 1.3: Energy Performance Models	5,000
Sub-task 1.4: Alternatives Analysis and Prioritization	8,000
Task 2: Energy Efficiency and Conservation Project Prioritization	7,000
Task 3: Presentation of the Final Report	1,500
Subtotal Labor	\$37,500
Travel Expenses	\$2,000
Total Project Budget	\$39,500

This is a Fixed Price Contract of \$39,500