



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 20- 11
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;

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 tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe;

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

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;

WHEREAS, the Squaxin Island Tribal Council finds that the regulation of business activities on all lands within the jurisdiction of the Squaxin Island Tribe is essential to the health and welfare of the Squaxin Island Tribe and its members;

WHEREAS, the Squaxin Island Tribe and the Department of Corrections (DOC) wish to enter into a contract agreement for the design and construction for the extension of one-thousand feet of reclaimed water pipe from 2321 W. Dayton Airport Road, Shelton to the location of the entrance to Washington Corrections Center, and installation of a water meter at the facility;

WHEREAS, the contract agreement contains a limited waiver of sovereign immunity regarding any disputes related to the contract services;

WHEREAS, in order to induce the Department of Corrections to complete and execute the contract agreement, it is necessary for the Tribal Council to ratify and approve the terms of the contract agreement; to authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; and to consent that the Tribe may be sued in a court having jurisdiction in disputes

over matters related to the agreement.

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby agrees to enter into the attached afore-described contract agreement with DOC;

NOW THEREFORE BE IT RESOLVED, the Tribal Council specifically limits its waiver of sovereign immunity for the purposes of this agreement to the limited waiver as stated in *Section 11 (Sovereign Immunity)* of this agreement; as follows:

11. Sovereign Immunity.

Nothing in this Contract is or will be deemed to be a waiver of the Tribe's sovereign immunity from suit, except that the Tribe hereby provides a limited waiver of its sovereign immunity and consents to be sued only by the Contractor should the Contractor commence an action to enforce the Tribe's obligations under this Contract. The Tribe's monetary liability in no case shall exceed the amount of the contract, or \$96,000. This limited waiver is for the Contractor's exclusive use and benefit and will not apply to or extend to any third party or third-party beneficiary or any assignee of either Party; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for punitive damages of any kind may be made or enforced against the Tribe. The limited waiver of sovereign immunity shall only apply during the period of performance of this Contract.


The Squaxin Island Tribal Council shall execute a formal Resolution that provides a limited waiver of sovereign immunity, which is included as part of this Contract.

All actions or suits arising out of this Contract will be brought in the United States District Court for the Western District of Washington. If the United States District Court lacks jurisdiction, then an action may be brought in state court. The Tribe expressly agrees and consents to be sued in such courts and in such priority. Notwithstanding the foregoing, the Contractor may but is not required to exercise this limited waiver of sovereign immunity in the Squaxin Island Tribal Court.

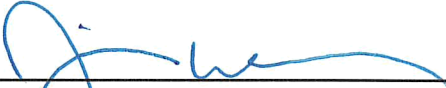
NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby authorizes the Council Chairman or the Tribal Administrator to do any and all things necessary to effect execution of the Contract.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 12 day of March, 2020, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.



Arnold Cooper, Chairman

Attested by: 

Jeremie Walls, Secretary



Charlene Krise, 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 this 20th day of February, 2020, between the Washington State Department of Corrections, with a principal place of business at 7345 Linderson Way SW, Tumwater, WA 98501 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 at 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. Schedule

This Contract shall be effective on February 20, 2020, and shall automatically terminate on November 30, 2020 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 Either party may also terminate this Contract for its convenience without cause. Should a party elect to terminate under this subsection 6.2, that party shall give the counterparty 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 this Contract is based are as follow: this Contract, together with such supplementary agreements and conditions as are attached to this Contract, and which are labeled as Exhibits. 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 shall govern.

8. Contract Officer

8.1 Erica Marbet, Water Resources Biologist 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 Nanette Graham, P.E., Director of Capital Planning and Development is Contractor's representative for this Contract, and shall be responsible for the performance of this Contract, and shall have DOC signature authority for all matters related to this Contract other than the signing of this Contract Agreement.

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 with 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 acts, negligence 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.

10. Dispute resolution

The Parties shall attempt in good faith to resolve any dispute arising out of this Contract by first attempting to resolve it through informal discussions between persons with direct responsibility for administering this Contract. If that is unsuccessful, the Parties shall attempt to resolve the dispute by holding a meeting that is attended by representatives with decision-making authority. If the dispute cannot be resolved within a reasonable time not to exceed sixty (60) days from this latter meeting, which time may be extended by mutual consent of the Parties, then the Parties may seek resolution through judicial means.

11. Sovereign Immunity

Nothing in this Contract is or will be deemed to be a waiver of the Tribe's sovereign immunity from suit, except that the Tribe hereby provides a limited waiver of its sovereign immunity and consents to be sued only by the Contractor should the Contractor commence an action to enforce the Tribe's obligations under this Contract. The Tribe's monetary liability in no case shall exceed the amount of the contract, or \$96,000. This limited waiver is for the Contractor's exclusive use and benefit and will not apply to or extend to any third party or third-party beneficiary or any assignee of either Party; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for punitive damages of any kind may be made or enforced against the Tribe. The limited waiver of sovereign immunity shall only apply during the period of performance of this Contract.

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12. 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. 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.

13. 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 one million dollars per occurrence. Contractor shall furnish the Tribe with a certificate of insurance prior to beginning any work under this Contract.

14. 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.

15. 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.

16. 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.

17. 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.

18. Severability

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

19. No Partnership

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

20. 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.

21. 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.

22. Execution

(Check applicable provision.)

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

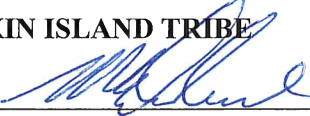
OR

_____ 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 on the date herein indicated.

DATE: 3/13/20

SQUAXIN ISLAND TRIBE



By: Marvin Campbell
Title: Tribal Administrator

Address: 10 SE Squaxin Lane
Shelton, WA 98584
Telephone: (360) 427-9781
Facsimile: (360) 426-3971

DATE: _____

CONTRACTOR

By: Debra J. Eisen
Title: Contracts Administrator

Address: 7345 Linderson Way SW
Tumwater, WA 98501
Telephone: 360-725-5363
Facsimile: 360.664.2009
Taxpayer I.D.: 91-1142111

EXHIBIT A

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

Task 1: 100% design and construction to extend ~1000 feet of reclaimed water pipe from 2321 W. Dayton Airport Road to the entrance to the Washington Corrections Center (WCC).

Design will include

*DOC will put out a request for qualifications from contractors/consultants for design and make a selection based on DOC approved criteria. The consultant will design options and estimate costs for the best available route of a reclaimed water pipe (purple pipe).
The contractor will install a water meter near the rear entrance to the facility. This will allow the facilities maintenance department to connect the new reclaimed water line to the irrigation lines throughout the facility.*

Contractor shall receive payment in an amount no greater than \$96,000 unless otherwise agreed to in a written amendment to this Agreement that is signed by an authorized representative of each Party.

EXHIBIT B

PAYMENT SCHEDULE

Full payment by the Tribe shall be due to the Contractor upon completion of the design by the Contractor.