



Contract Number

24-131

SAP Number

Project and Facilities Management Department Project Management

Department Contract Representative	<u>Scott Hughes</u>
Telephone Number	<u>909-387-5000</u>
Contractor	<u>Arizona West Builders and Communications, Inc.</u>
Contractor Representative	<u>Carl Guilliams</u>
Telephone Number	<u>602-418-1440</u>
Contract Term	<u>340 Days</u>
Original Contract Amount	<u>\$201,000</u>
Amendment Amount	<u>\$0</u>
Total Contract Amount	<u>\$201,000</u>
Project Name	<u>800MHz Searchlight New Generator Project</u>
Cost Center	<u>7700003100</u>
WBSE	<u>10.10.0989</u>

IT IS HEREBY AGREED AS FOLLOWS:

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement" or "Contract") is made effective this February 6, 2024 ("Agreement Date") by and between SAN BERNARDINO COUNTY ("County") and Arizona West Builders and Communications, Inc. ("Contractor") for the construction of the 800MHz Searchlight New Generator ("Project").

ARTICLE I
CONTRACT DOCUMENTS AND INTERPRETATION

1.1 DEFINITIONS

The meanings of all capitalized terms used in the Contract Documents and not otherwise defined herein are contained in the General Conditions. If not defined in the General Conditions, they shall have the meaning assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context of the portion of the Contract Documents where such terms are used.

1.2 CONTRACT DOCUMENTS

The "Contract Documents" except for modifications issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference:

- 1.2.1 Advertisement for Bids (Project No. 10.10.0989), dated August 22, 2023.
- 1.2.2 Bidder's Proposal, dated October 24, 2023.
- 1.2.3 General Conditions
- 1.2.4 Performance Bond
- 1.2.5 Labor and Material Bond
- 1.2.6 Special Conditions
- 1.2.7 Bid documents entitled "800MHz Searchlight New Generator".
- 1.2.8 Specifications, entitled "800MHz Searchlight New Generator".
- 1.2.9 Drawings, entitled "800MHz Searchlight New Generator".
- 1.2.10 Addendum No. 1, dated September 28, 2023.
- 1.2.11 Addendum No. 2, dated October 6, 2023.
- 1.2.12 Certified copy of the record of action of the Board of Supervisors, San Bernardino County meeting of February 6, 2024.

1.3 ENTIRE AGREEMENT

The Contract Documents represent the entire and integrated agreement between County and Contractor, all other representations or statements, whether verbal or written, are merged herein. The Agreement may be amended only by written modification. The San Bernardino County Board of Supervisors, or its authorized designee, must approve any amendment to this Agreement.

ARTICLE II
THE WORK

2.1 SCOPE OF WORK

2.1.1 Contractor will furnish all materials, labor, tools, equipment, apparatus, facilities, transportation, construction, landscaping, clean-up, and all other construction services of any type necessary to complete all Work in strict conformity with the Contract Documents. Except with regard to any material to be provided and/or installed by County, Contractor shall fully commission and turn over a complete operational and fully functional Project to County. Without limiting the generality of this Section, Contractor shall provide the following Work and services:

a. Contractor shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas, water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment. The County will pay connection fees directly to the utilities for all permanent water and electrical connections.

b. Contractor shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to construct the complete, operational, and fully functional Project. Contractor shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

c. Contractor shall obtain, at Contractor's expense, all governmental and private approvals, permits and licenses, required to complete the Work; provided, however, County will be responsible for paying the cost of all County imposed fees necessary for the Project. Contractor shall construct a complete, operational, and fully functional Project in full compliance with all Applicable Laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

2.2 STANDARD OF PERFORMANCE

In addition to and without limiting Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.2.1 Comply with the requirements of the Contract Documents;

2.2.2 Comply with Applicable Laws;

2.2.3 Conform to the standard of care applicable to those who provide construction of the type called for by this Agreement for projects of a scope and complexity that is comparable to the Project;

2.2.4 Furnish efficient business administration of the Work, utilizing senior level management and other qualified personnel to manage the Work; and

2.2.5 Apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the express best interests of the County and within the limitations of the Contract Sum and Contract Time.

ARTICLE III
TIME FOR PERFORMANCE

3.1 CONTRACT TIME

The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the County. If County's issuance of a Notice to Proceed is delayed due to Contractor's failure to provide insurance documents or bonds within ten (10) calendar days after the date of award of the Contract by the Board of Supervisors or Chief Executive Officer, one (1) calendar day will be deducted from the number of days to achieve Final Completion of the Work for every day of delay in County's receipt of such documents. This right is in addition to and does not affect County's right to demand forfeiture of Contractor's Bid Security, or any other rights or remedies available to County if Contractor persistently delays in providing the required documentation. Contractor agrees to promptly commence the Work after the Notice to Proceed is issued by the County and to achieve Final Completion of the entire Work within **340 calendar days** after the Date of Commencement ("Contract Time"). The Contract Time may be extended only by the written authorization of the County.

3.2 LIQUIDATED DAMAGES

3.2.1 County and Contractor recognize that time is of the essence in this Agreement and that the County may suffer financial loss, including but not limited to, the loss of grant funds, additional contract administration expenses, and loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

3.2.2 Contractor and County agree to liquidate damages with respect to Contractor's failure to achieve Final Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract. Contractor acknowledges and agrees that the liquidated damages are intended to compensate County solely for Contractor's failure to meet the deadline for Final Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

3.2.3 In the event that Contractor fails to achieve Final Completion of the Work within the Contract Time, Contractor agrees to pay County **\$750.00 per day** for each calendar day that Final Completion is delayed.

3.2.4 Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by County of damages that it will incur in the event of the late completion of the Work. Contractor and County agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the County due to a delay in completion of the Work. Accordingly, the County and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

3.2.5 It is further mutually agreed that County shall have the right to deduct liquidated damages against progress payments or retainage and that the County will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to County.

**ARTICLE IV
CONTRACT SUM**

4.1 CONTRACT SUM

4.1.1 Total Compensation. County shall pay the Contractor, and Contractor agrees to accept, in current funds for the Contractor's complete performance of the Work in accordance with the Contract Documents the Contract Sum of:

BASE BID.....\$201,000

4.1.2 All Inclusive Price. The Contract Sum, subject to additions and deductions, is the total amount payable by County to Contractor for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Contractor.

4.2 PAYMENT BY ELECTRONIC FUND TRANSFER

Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

**ARTICLE V
CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

5.1 GENERAL SCOPE OF WORK

5.1.1 Contractor shall provide all materials, labor, equipment, and undertake all efforts necessary or appropriate to construct the Project in accordance with the requirements of the Contract Documents, all governmental approvals, all Applicable Law, and all other applicable safety, environmental and other requirements taking into account the constraints affecting the Project Site. Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve Final Completion of the Project and elements thereof on or before the deadlines provided in the Contract Documents shall be Contractor's sole responsibility. The costs of all such materials, services and efforts are included in the Contract Sum.

5.1.2 The Contractor and all Subcontractors shall obtain any required licenses from the local jurisdiction where the Project is located (i.e. local City or County), prior to commencement of Work.

5.2 BEFORE STARTING WORK

Contractor shall submit the following to County for review and acceptance within fourteen (14) calendar days after the Date of Commencement fixed in County's Notice to Proceed, and as a condition to payment: (i) detailed Project Schedule including each deadline specified in the Contract Documents; (ii) Schedule of Submittals; (iii) material Procurement Schedule; and (iv) a Schedule of Values in accordance with the requirements of the General Conditions and other Contract Documents.

5.3 INITIAL CONFERENCE

Within twenty (20) calendar days after the Date of Commencement fixed in County's Notice to Proceed, a conference attended by County and Contractor and others as appropriate will be held to establish a working understanding among the Parties as to the Work and to discuss the schedules, progress meetings, procedures

for handling submittals, processing Applications for Payment, maintaining required records, coordination with Contractor Team Members, and other Project administration matters.

5.4 EVALUATION OF PRELIMINARY SUBMITTALS

At least ten (10) calendar days before submission of the first Application for Payment, a conference attended by Contractor, County and others as appropriate, will be held to review for acceptability the submittals required by the Contract Documents. No progress payment shall be made to Contractor until the required submittals are acceptable to County. The detailed Project Schedule will be acceptable to County as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on County responsibility for the sequencing, scheduling or progress of the Work nor interfere with nor relieve Contractor from Contractor's full responsibility therefore. The format and structure of the Project Schedule will be set forth in the Contract Documents and approved by County. County's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work. Contractor's schedule of submittal will be acceptable to County as providing a workable arrangement for reviewing and processing the required submittals.

5.5 CONSTRUCTION

Contractor shall perform Construction in accordance with the requirements of the Contract Documents.

5.5.1 Construction shall be performed by Contractor and Subcontractors and suppliers who are selected, paid and acting in accordance with the procedures outlined in the Contract Documents.

5.5.2 The Contractor shall keep the County informed of the progress and quality of the Work in the form of periodic written reports and meetings, as determined by the County, but no less than monthly.

5.5.3 As a condition of final payment to Contractor, Contractor shall provide written certification that the Work has been constructed in accordance with the Contract Documents.

ARTICLE VI

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

6.1 Contractor has visited the Site and has reasonably examined the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

6.2 Contractor has reasonably examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports available for construction purposes, of physical conditions, or conditions which may be apparent at the Site and accepts the criteria set forth in these documents and the Contract Documents to the extent of the information contained in these documents upon which the Contractor is entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in these documents.

6.3 After Contract award, Contractor will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations that pertain to the surface and subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site as Contractor considers necessary for the performance or furnishing of Work at the

Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

6.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, test, reports and studies with the terms and conditions of the Contract Documents.

6.5 Contractor has given County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before Contract award in or among the Contract Documents and actual conditions and the written resolution thereof through Addenda issued by County is acceptable to Contractor.

6.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of Nevada.

6.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

6.8 Contractor certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or on the Federal Government Excluded Parties List System (www.epls.gov). Contractor agrees that signing this Contract shall constitute signature of this Certification.

ARTICLE VII

PROJECT ACCESS, RECORD RETENTION AND AUDITS

7.1 At all times during construction of the Project, Contractor shall coordinate with the County to provide employees, subcontractors, and consultants of County reasonable unrestricted access to observe, monitor and inspect the Project. The County's access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to construction of the Project.

7.2 Contractor expressly acknowledges it is aware of and will comply with all record retention and audit requirements contained in the Contract Documents. These requirements include, but are not limited to, the maintenance of an Official Project File that must be preserved a minimum of five (5) years, the protection of records from fire or other damage, the maintenance of all records in accordance with generally accepted accounting principles, and the agreement that the County or its designated representative shall have the right to review, to audit, and to copy any records and supporting documentation pertaining to the performance of this Agreement.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 INDEPENDENT CONTRACTOR

Contractor is, and shall be, acting at all times in the performance of this Agreement as an independent Contractor. Contractor shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Contractor and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

8.2 COUNTY EMPLOYEES AND OFFICIALS

Contractor shall employ no County official nor any regular County employee in the Work performed pursuant to this Agreement. No officer or employee of County shall have any financial interest in this Agreement in violation of applicable provisions of law.

Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer staff, Chief Executive Officer or member of such officer staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

8.3 INACCURACIES OR MISREPRESENTATIONS

If during the course of the administration of this agreement, the County determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this contract may be immediately terminated. If this contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

8.4 NOTICES

Any notices or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to Contractor's agent (as designated by Contractor) or to County's Engineer and County Counsel as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

COUNTY	CONTRACTOR
Project and Facilities Management Department	As shown on page one of this
Project Management	Contract
<hr/>	<hr/>
385 North Arrowhead Ave., 3 rd Fl.	<hr/>
<hr/>	<hr/>
San Bernardino, CA 92415-0184	<hr/>
<hr/>	<hr/>

8.5 CONTRACT EXECUTION

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

ARTICLE IX

The contract is delivered by Arizona West Builders and Communications, Inc. to County for acceptance by its Board of Supervisors at San Bernardino, California, and is deemed to have been entered into at San Bernardino, California.

//

//

//
//
//
//
//
//
//
//
//
//
//
//

IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County has caused this Contract to be subscribed by its duly authorized officers, in its behalf, and the said party of the second part has signed this Contract.

SAN BERNARDINO COUNTY

► *Dawn Rowe*
Dawn Rowe, Chair, Board of Supervisors

Date: FEB 06 2024

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By  Deputy

(Print or type name of corporation, company, contractor, etc.)

By ► *Carl Guilliams*
(Authorized signature - sign in blue ink)

Name Carl Guilliams
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: Jan 12, 2024

Address Jan 17, 2024

FOR COUNTY USE ONLY

Approved as to Legal Form
► *Julie J. Surber*
Julie J. Surber (Jan 12, 2024 09:19 PST)
Julie Surber, Principal Asst. County Counsel
Date Jan 12, 2024

Reviewed for Contract Compliance
► *Scott Hughes*
Scott Hughes (Jan 12, 2024 10:04 PST)
Scott Hughes, Supervising Project Manager
Date Jan 12, 2024

Reviewed/Approved by Department
► *Don Day*
Don Day (Jan 17, 2024 12:52 PST)
Don Day, Director PFMD
Date Jan 17, 2024