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GILA COUNTY
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1400 E. Ash Street
Globe, AZ 85501

SERVICE AGREEMENT NO. 072513-1

FCC SECTION 106 SERVICES FOR THE SIGNAL PEAK RADIO TOWER UPGRADE PROJECT

THIS AGREEMENT, made and entered into this 01st day of AUGUST, 2013, by and between Gila County, a political subdivision of the State of Arizona hereinafter designated the County, and TETRA TECH, of the City of Salt Lake City, State of Utah, hereinafter designated the Contractor.

WITNESSETH: The Contractor, for and in consideration of the sum to be paid him by the County, in the manner and at the time hereinafter provided, and of the other covenants and agreement's herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE 1 - SCOPE OF SERVICES: The Contractor shall provide the services and products listed in the Scope of Work below and shall do so in a good, workmanlike and substantial manner and to the satisfaction of the County under the direction of the Gila County Emergency Management Director or designee.

All work performed by the Contractor shall be completed to local codes and regulation per Gila County and the State of Arizona and consistent with all Gila County guidelines.

Scope of Work: Refer to attached Attachment "A to Service Agreement No. 072513-1" by mention made a binding part of this agreement as set forth herein.

Contractor Fee's: Refer to Attachment "A to Service Agreement No. 072513-1" by mention made a binding part of this agreement as set forth herein. To the extent that the terms and conditions of this Service Agreement conflict with the Terms and Conditions of Attachment "A", the terms and conditions of this service agreement will prevail and govern the contractual relationship between the parties.

ARTICLE 2 - TERMINATION: The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work as directed in the notice. If the contract is terminated, the County shall be liable only for the services rendered under this contract and accepted material received by the County before the effective date of termination.

ARTICLE 3 - INDEMNIFICATION: Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

ARTICLE 4 - INSURANCE REQUIREMENTS: Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability - Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products - Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease - Policy Limit	\$500,000

a. Policy shall contain a waiver of subrogation against the County of Gila.

3. **Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
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Annual Aggregate

\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to **Gila County Purchasing Department, 1400 E. Ash St., Globe, AZ, 85501** or and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and endorsements are to be received and approved by the County before work commences.* Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be sent directly to **Gila County Purchasing Department, 1400 E. Ash St., Globe, AZ, 85501** or email to dsgroi@co.gila.az.us. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies or Contractor shall furnish to the County separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

ARTICLE 5 – LEGAL ARIZONA WORKERS ACT COMPLIANCE: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

ARTICLE 6- WARRANTY

Contractor expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which County intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to County, its successors, and assigns. Contractor agrees to replace or correct, at Contractor's sole cost and expense, defects of any goods or services not conforming to the foregoing warranty, or improperly installed, as well as guarantee to the County and to the Owner, against liability, losses or damage to any or all parts of the work arising from said installation during a period of two (2) years from date of completion. All guarantees will inure to the benefit of the County and the Owner, their successors or assigns, including equipment warranties, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, County, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the County in doing so. Contractor recognizes that County's requirements may require immediate repairs in reworking of defective goods, without notice to the Contractor. In such event, Contractor shall reimburse County for those costs, delays, or other damages which County has incurred.

ARTICLE 7 - LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor. The Contractor shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

ARTICLE 8 - CANCELLATION: This agreement is subject to cancellation pursuant to A.R.S. §38-511. If the Agreement is terminated, the county shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination.

ARTICLE 9 - RELATIONSHIP OF THE PARTIES: Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Contractor warrants that he has obtained or will obtain Worker's Compensation Insurance for his employees working on this contract and that any subcontractors will likewise obtain Worker's Compensation Insurance for of their employees working on this contract. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

ARTICLE 10 - NON-APPROPRIATIONS CLAUSE: Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

ARTICLE 11 - ENTIRE CONTRACT CLAUSE: The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral agreement or oral provision outside this Contract shall have any force or effect.

ARTICLE 12 - NON-WAIVER OF ENFORCEABILITY: Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the

provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision

ARTICLE 13 - GOVERNING LAW: Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

ARTICLE 14-- TERM: The term of the Contract shall commence upon award and remain in effect for a period of seventy-five days.

ARTICLE 15 - PAYMENT/BILLING: Contractor shall be paid a not to exceed, without prior written agreement of the County amount of \$3,620.00 for completion of the projects as outlined in the Scope of Services.

All invoices shall be submitted to Gila County Accounts Payable, 1400 E. Ash St, Globe, Arizona and include the following information:

- Purchase Order Number
- Contract Number
- Invoice Number
- Service Location
- Tetra Tech and Address
- Description of Service

Any alterations to the scope of work resulting in a change in cost must have prior written approval by the County. Any unauthorized work may result in non-payment to the vendor.

Gila County employs a "Net 15" payment term for services meaning the payment will be issued fifteen (15) days from the date the County receives the invoice from the Contractor. Purchase orders sent to the Contractor reflect these terms and conditions.

The Contractor shall have a current I.R.S. W-9 form on file with the County unless not required by law. The County shall not remit payment if the Contractor does not have a current W-9.

IN WITNESS WHEREOF, Service Agreement No. 072513-1 has been duly executed by the parties hereinabove named, on the date and year first above written.

GILA COUNTY



Don E. McDaniel Jr., County Manager

Date: 8/1/13

TETRA TECH



Signature

Derek Amidon

Print Name



July 23, 2013

Jeannie Sgori
Contracts Support Specialist
Gila County Finance
1400 East Ash Street
Globe, Arizona 85501

Subject: FCC Section 106 Services for the Signal Peak Radio Tower Replacement Project

Dear Ms. Sgori:

Tetra Tech is pleased to provide a scope and cost estimate for the Federal Communication Commission (FCC) Section 106 Cultural Resource Review for Signal Peak Radio Replacement Project (Project). Tetra Tech will conduct a cultural resource investigation for the project per FCC e-filing process for licensed communication towers. This letter proposal briefly outlines our technical approach.

Our unit price quote for the project is \$3,620 time and materials not to exceed (see attached for cost breakdown).

FCC Cultural Resource Review

The efforts associated with the Signal Peak Radio upgrade may inadvertently affect cultural resources; therefore, as outlined in the FCC nationwide programmatic agreement (PA) (FCC 04-222), a cultural resource inventory will need to be conducted as part of Section 106 of the National Historic Preservation Act (NHPA). The PA guidelines set for direct Area of Potential Effect (APE) effects is defined as the area that would be directly impacted as a result of construction. Visual APE is defined as a 0.5 miles from the tower site for towers less than 200 feet in height.

The FCC offers an E-Filing option for the entire process, which Tetra Tech will utilized for the project under our current FRN number. Upon notice to proceed (NTP) from Gila County, Tetra Tech's archaeologist will conduct the following actions:

- A search of available cultural resource records covering the above defined APE's through the Arizona State Historic Preservation Office (SHPO). The results will be used to identify any potentially sensitive sites within either APE.
- Tetra Tech will electronically file notice of the tower through the Tower Construction Notification System (TCNS). The system is utilized to notify regional Native American Tribal entities and State Historic Preservation Offices and conduct consultations throughout the undertaking. Responses and correspondence during the process are archived within the FCC servers.

Tetra Tech

136 East South Temple, Suite 910, Salt Lake City, UT 84111
Tel 801.364.1064 Fax 801.364.2021 www.tetrattech.com

Gila County's Signal Peak Radio Tower Upgrade FCC Section 106

- A site visit will be conducted after the results of the file search. The scope of the visit will be the current tower location and any historic properties within the visual APE. Appropriate landowner permissions will be sought prior to the accessing the site.

Tetra Tech assumes the project will require the full replacement of the existing Signal Peak tower and a FCC 620 form will be required. If the project is technically categorized as a collocation, then we will complete an FCC 621 form. In either case, the appropriate form will be completed through the FCC's e-filing system with appropriate attachments (including a technical report, if needed) produced and uploaded.

Once all appropriate electronic forms are completed and attachments uploaded, Tetra Tech will respond to any correspondence with Arizona SHPO and Native American Tribe through the completion of consultation and SHPO's final project concurrence.

Throughout the process, Tetra Tech will handle all agency correspondence and communicate regularly with Gila County project representatives.

Schedule

Tetra Tech plans a total of 30 active working hours for the cultural resource portion of the project. However, the overall project will likely take one and a half months to complete. The FCC requires 30 days from initial TCNS filing to allow for Native American review and comment. Additionally, Arizona SHPO has 30 days from the submission of appropriate 620/621 forms for review and comment.

Tetra Tech will work diligently within its power to ensure to keep the process moving forward.

Conclusion

Tetra Tech thanks Gila County for the opportunity to assist them with the Signal Peak Radio Tower Upgrade project. We are available to begin work immediately. If you have any questions or concerns, please call me 801-209-3992 or email me at mark.karpinski@tetrattech.com.

Sincerely,



Mark Karpinski, M.A., RPA
Cultural Resource Group Lead



Price Proposal

Signal Butte Radio Tower

FCC Section 106 for one radio tower
Submitted to: Gila County (Attn: Jeannie Sgrol)

Contract Type: T&M

Labor Plan		Price Summary / Totals	
2 Resource	Bill Rate >	Task Pricing Totals	3,620
	126.00	5.00% Admin Fee	170
	85.00	Technology Use Fee	
	Proj Area >	Total Price	3,790

Project Phases / Tasks	Schedule			Total Labor Hrs	Labor Rate Esc.	Labor	Subs	Travel	Mat'l's & Equip	ODGs	Task Pricing Totals
	From	Thru	Months								
x Signal Butte Radio Tower				30	0.00%	3,390	-	-	230	-	3,620
x FCC E-Filings				30		3,390	-	-	230	-	3,620
x TCMS Filing and Consultations				22		2,430	-	-	115	-	2,545
x 620/621 Filings and Consultations				5		565	-	-		-	565
x Technical Report and Appendices				4		1,300	-	-	115	-	1,415
x Field Work				12		960	-	-	115	-	1,075
x Tower Location Field Visit				8		960	-	-	115	-	1,075
				8			-	-		-	
				8			-	-		-	
Totals				30	0.00%	3,390	-	-	230	-	3,620

ATTACHMENT "A" TO SERVICE AGREEMENT NO. 072513-1
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