

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND JOHNSON CONTROLS INC., FOR INTERCONNECTION WITH CITY ETHERNET BETWEEN THE MRF AND ENERGY PLANT.

This Agreement is made between the City of Rapid City, a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after called the "City," and Johnson Controls Inc., located at 3413 Gateway Blvd., Sioux Falls, South Dakota 57106, herein after referred to as the "Contractor."

WHEREAS, the current connection between the MRF and energy plant has experienced communication problems; and

WHEREAS, the City desires to install an interconnect to increase reliability; and

WHEREAS, the Contractor is a company capable of providing such services; and

WHEREAS, the purpose of this Agreement is to specify under what terms and conditions the services will be performed.

NOW THEREFORE, the parties hereby agree as follows:

1. The Contractor agrees to provide an interconnection with the City's Ethernet between the City's Material Recovery Facility (MRF) and the City's Energy Plant. This work will be consistent with the proposal dated September 14, 2009, including the attached terms and conditions, but excluding the items crossed out by the City. The proposal has been attached hereto as Exhibit A and is hereby included in this Agreement.
2. The City will pay Contractor \$5,050 to install the proposed interconnect. No additional funds will be paid unless specifically authorized by the City.
3. Failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon strict adherence to that term, or any other term of this Agreement.
4. This Agreement constitutes the entire agreement of the parties. No other promises or consideration form a part of this agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. This agreement may only be amended or modified in writing by mutual agreement of the parties.
5. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

6. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

JOHNSON CONTROLS INC.

By: _____
Its: _____

PW120109-17



PROPOSAL

Johnson Controls, Inc.
Building Efficiency
3413 Gateway Boulevard
Sioux Falls, SD 57108
Tel.: 605/361 0880
FAX: 605/361 6773

TO: Mike Oiler

DATE:

9-14-09

PROJECT: Interconnect with City Ethernet

Scope of Work:

Johnson Controls will provide all necessary material, labor and programming to Interconnect the MRF to the energy plant via the City of Rapid Ethernet. This will eliminate the current leased phone line and add more reliability to the communication back bone.

Price: \$5,050.00

(IMPORTANT: This proposal incorporates by reference the terms and conditions on the following page.) This proposal is hereby accepted and Johnson Controls is authorized to proceed with the work; subject, however, to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.

This proposal is valid until:

Purchaser - Company Name

JOHNSON CONTROLS, INC.

Signature

Signature

Name: _____

Name: Salesman

Title: _____

Title: Title

Date: _____

PW120109-17

TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

1. **SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson, shall be distributed and installed by others under Johnson's supervision but at no additional cost to Johnson. Purchaser agrees to provide Johnson with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. Johnson agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge Johnson for any costs or expenses without Johnson's written consent.
Unless specifically noted in the statement of the scope of work or services undertaken by JCI under this agreement, JCI's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to Hazards without JCI's express written consent.
2. **INVOICING & PAYMENTS.** Johnson may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. ~~Purchaser shall pay Johnson at the time purchaser signs this agreement an advance payment equal to 10% of the contract price, which advance payment shall be credited against the final payment (but not any progress payment) due hereunder and purchaser agrees to pay Johnson additional amounts invoiced upon receipt of the invoice.~~ Waivers of lien will be furnished upon request, as the work progresses, to the extent payments are received. If Johnson's invoice is not paid within ⁴⁵30 days of its issuance, it is delinquent.
3. **MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of Johnson, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, Johnson shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor.
4. **WARRANTY:** Johnson warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by Johnson, for a one (1) year from installation. Johnson warrants that for equipment furnished and/or installed but not manufactured by Johnson, Johnson will extend the same warranty terms and conditions which Johnson receives from the manufacturer of said equipment. For equipment installed by Johnson, if Purchaser provides written notice to Johnson for any such defect within thirty (30) days after the appearance or discovery of such defect, Johnson shall at its option, repair or replace the defective equipment. For equipment not installed by Johnson, if Purchaser returns the defective equipment to Johnson within thirty (30) days after appearance or discovery of such defect, Johnson shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by Johnson shall be borne by the Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered, or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.
5. **LIABILITY.** Johnson shall not be liable for any special, indirect or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.
6. **TAXES.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by Johnson or, alternatively, shall provide Johnson with acceptable tax exemption certificates. Johnson shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.
7. **DELAYS.** Johnson shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond Johnson's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner, or other Contractors or delays caused by suppliers or subcontracts of Johnson, etc.
8. **COMPLIANCE WITH LAWS.** Johnson shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.
9. ~~**ATTORNEY'S FEES.** Purchaser agrees that he will pay and reimburse Johnson for any and all reasonable attorneys' fees which are incurred by Johnson in the collection of amounts due and payable hereunder.~~
10. **INSURANCE.** Insurance coverage in excess of Johnson's standard limits will be furnished when requested and required. No credit will be given or premium paid by Johnson for insurance afforded by others.

Item #18