

CITY OF TEMECULA, DEPARTMENT OF PUBLIC WORKS

CONTRACT

for

FIBER OPTIC COMMUNICATION SYSTEM UPGRADE

PROJECT NO. PW18-05

FEDERAL PROJECT NO. HSIPL - 5459 (026)

THIS CONTRACT, made and entered into the 14th day of September 2021, by and between the City of Temecula, a municipal corporation, hereinafter referred to as "City", and JFL Electric, Inc., hereinafter referred to as "Contractor."

WITNESSETH:

That City and Contractor, for the consideration hereinafter named, mutually agree as follows:

1. CONTRACT DOCUMENTS.

The complete Contract includes all of the Contract Documents, to wit: Notice Inviting Bids, Instructions to Bidders, Proposal, Performance Bond, Labor and Materials Bond, Plans and Specifications entitled **FIBER OPTIC COMMUNICATION SYSTEM UPGRADE, PROJECT NO. PW18-05, FEDERAL PROJECT NO. HSIPL - 5459 (026)**, Insurance Forms, this Contract, and all modifications and amendments thereto, the State of California Department of Transportation Standard Specifications (latest edition) where specifically referenced in the Plans and Technical Specifications, and the latest version of the Standard Specifications for Public Works Construction, including all supplements as written and promulgated by Public Works Standards, Inc. (hereinafter, "Standard Specifications") as amended by the General Specifications, Special Provisions, and Technical Specifications for **FIBER OPTIC COMMUNICATION SYSTEM UPGRADE, PROJECT NO. PW18-05, FEDERAL PROJECT NO. HSIPL - 5459 (026)**. Copies of these Standard Specifications are available from the publisher:

BNi Building News
Division of BNi Publications, Inc.
990 Park Center Drive, Suite E
Vista, CA 92081
(760) 734-1113

The Standard Specifications will control the general provisions, construction materials, and construction methods for this Contract except as amended by the General Specifications, Special Provision, and Technical Specifications for **FIBER OPTIC COMMUNICATION SYSTEM UPGRADE, PROJECT NO. PW18-05, FEDERAL PROJECT NO. HSIPL - 5459 (026)**.

In case of conflict between the Standard Specifications and the other Contract Documents, the other Contract Documents shall take precedence over, and be used in lieu of, such conflicting portions.

Where the Contract Documents describe portions of the work in general terms, but not in complete detail, it is understood that the item is to be furnished and installed completed and in place and that only the best general practice is to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Contract.

The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all. Any conflict between this Contract and any other Contract Document shall be resolved in favor of this Contract.

2. SCOPE OF WORK.

Contractor shall perform everything required to be performed, shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for **FIBER OPTIC COMMUNICATION SYSTEM UPGRADE, PROJECT NO. PW18-05, FEDERAL PROJECT NO. HSIPL - 5459 (026).**

All of said work to be performed and materials to be furnished shall be in strict accordance with the Drawings and Specifications and the provisions of the Contract Documents hereinabove enumerated and adopted by City.

3. CITY APPROVAL.

All labor, materials, tools, equipment, and services shall be furnished and work performed and completed under the direction and supervision, and subject to the approval of City or its authorized representatives.

4. CONTRACT AMOUNT AND SCHEDULE.

The City agrees to pay, and Contractor agrees to accept, in full payment for, the work agreed to be done, the sum of: **SIX HUNDRED NINETY THOUSAND THREE HUNDRED FORTY DOLLARS and FIFTY CENTS (\$690,340.50)**, the total amount of the base bid.

Contractor agrees to complete the work in a period not to exceed **Ninety (90) working days**, commencing with delivery of a Notice to Proceed by City. Construction shall not commence until bonds and insurance are approved by City.

5. CHANGE ORDERS.

All change orders shall be approved by the City Council, except that the City Manager is hereby authorized by the City Council to make, by written order, changes or additions to the work in an amount not to exceed the contingency as established by the City Council.

6. PAYMENTS.

- a. Lump Sum Bid Schedule. Before submittal of the first payment request, the Contractor shall submit to the Director of Public Works a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Director of Public Works may require. This schedule, as approved by the Director of Public Works, shall be used as the basis for reviewing the Contractor's payment requests.
- b. Unit Price Bid Schedule. Pursuant to Section 20104.50 of the Public Contract Code, within thirty (30) days after submission of a payment request to the City, the Contractor shall be paid a sum equal to 95% of the value of the work* completed according to the bid schedule. Payment request forms shall be submitted on or about the thirtieth (30th) day of each successive month as the work progresses. The final payment, if unencumbered, or any part thereof unencumbered, shall be made sixty (60) days after acceptance of final payment and the Contractor filing a one-year Warranty and an Affidavit of Final Release with the City on forms provided by the City.

- c. Payment for Work Performed. Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the City Manager, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract, and that the amount stated in the certificate is due under the terms of the Contract. Partial payments on the Contract price shall not be considered as an acceptance of any part of the work.
- d. Payment of Interest. Interest shall be paid on all undisputed payment requests not paid within thirty (30) days pursuant to Public Contracts Code Section 20104.50. Public Contract Code Section 7107 is hereby incorporated by reference.

7. LIQUIDATED DAMAGES / EXTENSION OF TIME.

- a. Liquidated Damages. In accordance with Government Code Section 53069.85, Contractor agrees to forfeit and pay to City the sum of one thousand dollars (\$1,000) per day for each calendar day completion is delayed beyond the time allowed pursuant to Paragraph 4 of this Contract. Such sum shall be deducted from any payments due to or to become due to Contractor.
- b. Extension of Time. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of, and without the fault or negligence of the Contractor, including delays caused by City. Within ten (10) calendar days of the occurrence of such delay, Contractor shall give written notice to City. Within thirty (30) calendar days of the occurrence of the delay, Contractor shall provide written documentation sufficient to support its delay claim to City. Contractor's failure to provide such notice and documentation shall constitute Contractor's waiver, discharge, and release of such delay claims against City.

8. WAIVER OF CLAIMS.

On or before making each request for payment under Paragraph 6 above, Contractor shall submit to City, in writing, all claims for compensation as to work related to the payment. Unless the Contractor has disputed the amount of the payment, the acceptance by Contractor of each payment shall constitute a release of all claims against the City related to the payment. Contractor shall be required to execute an affidavit, release, and indemnity agreement with each claim for payment.

9. PREVAILING WAGES.

Contractor shall comply with the provisions of Sections 1720, 1720.9, 1725.5, 1771.1(a), 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code.

Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, the sum of \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of the Contract. This project, work, or service will be subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1771.4.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of

Industrial Relations. Copies may be obtained from the California Department of Industrial Relations Internet website at: <http://www.dir.ca.gov>

The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor are included in Exhibit "B" of the project specifications. Future effective general prevailing wage rates which have been predetermined are on file with the California Department of Industrial Relations and are referenced but not printed in the general prevailing wage rates.

Contractor shall post a copy of such wage rates at the job site and if there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, Contractor shall pay not less than the higher wage rate.

10. TIME OF THE ESSENCE.

Time is of the essence in this contract.

11. INDEMNIFICATION.

All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of Contractor alone. Contractor agrees to save, indemnify, hold harmless and defend City of Temecula, Temecula Community Services District, and/or Successor Agency to the Temecula Redevelopment Agency, its officers, employees, and agents, against any and all liability, injuries, or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigations arising through the sole active negligence or sole willful misconduct of the City.

The Contractor shall indemnify and be responsible for reimbursing the City for any and all costs incurred by the City as a result of Stop Notices filed against the project. The City shall deduct such costs from Progress Payments or final payments due to the Contractor.

12. GRATUITIES.

Contractor warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities or promises to City's employees, agents, or representatives with a view toward securing this Contract or securing favorable treatment with respect thereto.

13. CONFLICT OF INTEREST.

Contractor warrants that none of its partners, members or shareholders are related by blood or marriage to any employee of the City who has participated in the development of the specifications or approval of this project or who will administer this project nor are they in any way financially associated with any City officer or employee, or any architect, engineer, or other preparers of the Drawings and Specifications for this project. Contractor further warrants that no person in its employ nor any person with an ownership interest in the Contractor has been employed by the City within one year of the date of the Notice Inviting Bids.

14. CONTRACTOR'S AFFIDAVIT.

After the completion of the work contemplated by this Contract, Contractor shall file with the City Manager, its affidavit stating that all workmen and persons employed, all firms supplying materials, and all subcontractors upon the Project have been paid in full, and that there are no claims outstanding against the Project for either labor or materials, except certain items, if any, to be set forth in an affidavit covering disputed claims or items in connection with a Stop Notice which has been filed under the provisions of the laws of the State of California.

15. NOTICE TO CITY OF LABOR DISPUTES.

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to City.

16. BOOKS AND RECORDS.

Contractor's books, records, and plans or such part thereof as may be engaged in the performance of this Contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the City.

17. INSPECTION.

The work shall be subject to inspection and testing by City and its authorized representatives during manufacture and construction and all other times and places, including without limitation, the plants of Contractor and any of its suppliers. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of inspectors. All inspections and tests shall be performed in such manner as to not unduly delay the work. The work shall be subject to final inspection and acceptance notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after completion of the work.

18. DISCRIMINATION.

Contractor represents that it has not, and agrees that it will not, discriminate in its employment practices on the basis of race, creed, religion, national origin, color, sex, age, or handicap.

19. CONTRACT ASSURANCE.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such remedy, as recipient deems appropriate.

20. GOVERNING LAW.

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Contract and also govern the interpretation of this Contract.

21. PROHIBITED INTEREST.

No member, officer, or employee of the City of Temecula or of a local public body shall have any interest, direct or indirect, in the Contract or the proceeds thereof during his/her tenure or for one year thereafter.

Furthermore, the Contractor covenants and agrees to their knowledge that no board member, officer or employee of the City of Temecula has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City of Temecula, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made, in writing, to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1220) of Division 4 of Title I of the Government Code of the State of California.

22. ADA REQUIREMENTS.

By signing this Contract, Contractor certifies that the Contractor is in total compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, as amended.

23. WRITTEN NOTICE.

Any written notice required to be given in any part of the Contract Documents shall be performed by depositing the same in the U.S. Mail, postage prepaid, directed to the address of the Contractor as set forth in the Contract Documents, and to the City addressed as follows:

Mailing and Delivery Address: Patrick A. Thomas, PE
Director of Public Works/ City Engineer
City of Temecula
41000 Main Street
Temecula, CA 92590

24. CLAIM DISPUTE RESOLUTION.

In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The disputed work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters.

All claims arising out of or related to the Contract or this project, and the consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims. All such claims are also subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. Thus, the Contractor or any Subcontractor must present a claim in accordance with the Government Claims Act as a prerequisite to prosecuting any claim against the City. The filing or prosecution of a claim in compliance with Section 9204 and/or Article 1.5 (if applicable) does not in any way obviate the need to timely present a claim under the Government Claims Act, or in any toll the expiration of any limitations period for the timely presentation of a claim under the Government Claims Act.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the date first above written.

DATED: 8/13/2021

CONTRACTOR:
JFL Electric, Inc.
8257 Compton Avenue
Los Angeles, CA 90001
(323) 581-4400
jloera@jfelectricinc.com

By: 

Feliciano Loera
Print or type NAME

President
Print or type TITLE*

By: 

Adrian Loera
Print or type NAME

Secretary
Print or type TITLE*

(*Signatures of two corporate officers required for Corporations)

CITY OF TEMECULA

DATED: _____

By: _____
Maryann Edwards, Mayor

ATTEST:

Randi Johl, City Clerk

APPROVED AS TO FORM:

Peter M. Thorson, City Attorney