

AGREEMENT TO PROVIDE AERIAL FIBER INSTALLATION SERVICES – ONGOING

THIS AGREEMENT TO PROVIDE AERIAL FIBER INSTALLATION SERVICES - ONGOING ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **SERVICE AND TECHNOLOGY NETWORK SOLUTIONS, INC.**, a for-profit corporation duly organized and authorized to do business in the State of Florida (EIN: 20-2532775) ("Vendor").

RECITALS:

WHEREAS, on September 30, 2020, the City of Ocala issued an Invitation to Bid ("ITB") for the provision of aerial fiberoptic cable installation services for Ocala Fiber Network, ITB No.: OFN/200700 (the "Solicitation"); and

WHEREAS, a total of six (6) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, the bid submitted by Vendor was found to be the lowest; and

WHEREAS, Vendor was chosen as the intended awardee to provide aerial fiberoptic cable installation services for Ocala Fiber Network ("Services").

WHEREAS, Vendor certifies that Vendor and its subcontractors are qualified and possess the required licensure and skill to perform the work required for the Project as specified in the Scope of Work; and

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The contract documents which comprise the entire understanding between City and Vendor shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; and (c) the City's Solicitation for the Project and the bid submitted by Vendor in response to same (the "Solicitation Documents"). Each of these documents are incorporated herein by reference for all purposes.

If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1 through A-4)

Exhibit B: Price Proposal (B-1)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B.

3. **SCOPE OF SERVICES.** Vendor shall provide all materials, labor, supervision, tools, accessories, equipment, permits, fees, certifications, and all other things necessary for Vendor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and the Solicitation Documents. The Scope of Work may only be adjusted by written amendment executed by both parties.
4. **COMPENSATION.** City shall pay Vendor up to a maximum limiting amount of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000)** (the "Contract Sum") as full and complete compensation for the timely and satisfactory provision of materials and services over the course of the Agreement Term in accordance with the Contract Documents. The allowability of compensation sought under this Contract is expressly made subject to the terms of this Contract, and any pertinent Federal and State law.
 - A. **Pricing.** Vendor shall be compensated in accordance with the unit pricing schedule set forth in the attached **Exhibit B – Price Proposal**.
 - B. **Renewal Pricing Increases.** Any and all renewals shall be subject to a maximum negotiated price increase of no more than **THREE PERCENT (3%)** above the pricing set forth in **Exhibit B - Price Proposal**.
 - C. **Project Schedule and Progress Reports.** A progress report and updated project schedule must be submitted with each monthly pay request indicating the percent of services completed to date. This report will serve as support for payment to Vendor and the basis for payment in the event project is suspended or abandoned.
 - D. **Invoice Submission.** All invoices submitted by Vendor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Vendor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala, Ocala Fiber Network**, Attn: **William Weakland**, E-mail: wweakland@ocalafl.org.
 - E. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
 - F. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Vendor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this

Agreement. Any payment withheld shall be released and remitted to Vendor within **THIRTY (30)** calendar days of the Vendor's remedy or resolution of the inadequacy or defect.

G. **Excess Funds.** If due to mistake or any other reason Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Vendor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.

H. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **EFFECTIVE DATE AND TERM.** City and Vendor acknowledge and agree that this Agreement is subject to an initial evaluation period of no less than eight (8) weeks (the "Trial Period"). As such, this Agreement shall become effective and commence on **NOVEMBER 17, 2020** and continue initially for a term of **EIGHT (8) WEEKS**, through and including **JANUARY 12, 2021**. Thereafter, upon City's determination that Vendor has satisfactorily completed the Trial Period, the Agreement shall be extended for the full **TWO (2)** year term, through and including **NOVEMBER 16, 2022**. This Agreement may be renewed for up to **TWO (2)** additional, **ONE-YEAR (1-YEAR)** periods by written consent between City and Vendor. This Agreement may only be renewed upon written consent between City and Vendor.

6. **TIME FOR PERFORMANCE.** Time is of the essence with respect to the performance of all duties, obligations, and responsibilities set forth in this Agreement and the Contract Documents.

A. Vendor shall mobilize and commence work no later than **TEN (10)** working days from the date of issuance of a Notice to Proceed for the project by City. At no time will the Vendor be allowed to lag behind.

B. **All work shall be substantially completed by Vendor in a manner satisfactory to the City Project Manager according to the timeline set forth on the Notice to Proceed. The number of days allotted to complete a work order shall be agreed upon in writing in advance and clearly noted on the Notice to Proceed.**

C. The Time for Performance under this Agreement may only be adjusted by Change Order, in the sole and absolute discretion of City. Any request for an extension of the Time for Performance must be submitted in a writing delivered to the City Project Manager, along

with all supporting data. All requests for adjustments in the Time for Performance shall be determined by City.

- D. As to any delay, inefficiency, or interference in this performance of this Agreement caused by any act or failure to act by City, the Vendor's sole remedy shall be the entitlement of an extension of time to complete the performance of the affected work in accordance with the Contract Documents. Vendor agrees to make no claim for extra or additional costs attributable to said delays, inefficiencies or interference, except as provided in this Agreement.
- E. None of the provisions of this section shall exclude City's right of recovery for damages caused by delays or inefficiencies caused by any act or failure to act by Vendor, to include costs incurred by City for the procurement of additional professional services.

7. **LIQUIDATED DAMAGES FOR LATE COMPLETION.** The parties agree that it would be extremely difficult and impracticable under the presently known facts and anticipated circumstances to ascertain and fix the actual damages that City and its residents would incur should Vendor fail to achieve Substantial Completion and/or Final Completion and readiness for final payment by the dates specified for each under the terms of this Agreement. Accordingly, the parties agree that should Vendor fail to achieve Substantial Completion by the date specified, then Vendor shall pay City, as liquidated damages and not as a penalty, the sum of **ONE HUNDRED AND NO/100 DOLLARS (\$100)** per day for each calendar day of unexcused delay in achieving Substantial Completion beyond the date specified for Substantial Completion in the Contract Documents. After Substantial Completion, if Vendor shall neglect, refuse, or fail to complete the remaining work within the time specified in the Contract Documents for Final Completion and readiness for final payment or any proper extension thereof granted by City, Vendor shall pay City, as liquidated damages and not as a penalty, additional sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25)** per day for each calendar day of unexcused delay in achieving completion and readiness for final payment.

- A. **No Waiver of Rights or Liabilities.** Permitting Vendor to continue and finish the work, or any part thereof, beyond the dates specified for Substantial Completion and/or Final Completion and readiness for final payment shall not operate as a waiver on the part of the City of any of its rights under this Agreement. Any liquidated damages assessed pursuant to this section shall not relieve Vendor from liability for any damages or costs of other contractors caused by a failure of Vendor to complete the work as agreed.
- B. **Right to Withhold or Deduct Damages.** When liquidated damages are due and owing, City shall have the right to: (1) deduct the liquidated damages from any money in its hands or from any money otherwise due or to become due to Vendor; or to (2) initiate any

applicable dispute resolution procedure for the recovery of liquidated damages within the times specified under this Agreement.

- C. **Non-Cumulative.** The parties agree and understand that the amounts set forth under this section for liquidated damages are not cumulative with one another. The amount set forth as liquidated damages for Vendor's failure to achieve Substantial Completion shall be assessed upon default and continue until Substantial Completion is attained. The amount set forth as liquidated damages for Vendor's failure to achieve Final Completion and readiness for payment shall be assessed after Substantial Completion is attained and apply until Final Completion is attained.
- D. **Additional Costs.** In addition to the liquidated damages set forth under this section, Vendor agrees to pay all costs and expenses incurred by City due to Vendor's delay in performance to include inspection fees, superintendence costs, and travel expenses.
- E. **Injunctive Relief.** The parties acknowledge that monetary damages may not be a sufficient remedy for Vendor's failure to achieve Substantial Completion or Final Completion in accordance with the terms of this Agreement, and that City shall be entitled, in addition to all other rights or remedies in law and equity, to seek injunctive relief.

8. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.

When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Vendor performance shall be extended for a number of days equal to the duration of the force majeure. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

9. **INSPECTION AND ACCEPTANCE OF THE WORK.** Vendor shall report its progress to the City Project Manager as set forth herein. All services, work, and materials provided by Vendor under this Agreement shall be provided to the satisfaction and approval of the Project Manager.
- A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials furnished, or workmanship performed, the rate of progress of the work, the interpretation of the plans and specifications, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Vendor in its Proposal. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.
 - B. Neither the Project Manager's review of Vendor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Vendor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident Vendor's furnishing and performing the work.
10. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Vendor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Vendor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
 - (1) Vendor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
 - (2) Vendor provides material that does not meet the specifications of the Agreement;
 - (3) Vendor fails to complete the work required within the time stipulated in the Agreement;
 - (4) Vendor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement; or

(5) There becomes an unresolved discrepancy regarding quality of work, quantity of work, or funding issues.

- B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
- C. **City's Remedies Upon Vendor Default.** In the event that Vendor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
 - (1) City shall be entitled to terminate this Agreement without further notice;
 - (2) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
 - (3) City shall be entitled to recover from Vendor all damages, costs, and attorney's fees arising from Vendor's default prior to termination; and
 - (4) City shall be entitled to recovery from Vendor any actual excess costs by: (i) deduction from any unpaid balances owed to Vendor; and (ii) any other remedy as provided by law.
- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Vendor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
- E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Vendor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Vendor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Vendor as permitted under this Agreement and approved by City.

11. **WARRANTY.** Vendor warrants that all labor, materials, and equipment furnished under this Agreement are new, of the type and quality required for the Project, and installed in a good

and workmanlike manner in accordance with the Contract Documents. Vendor shall guarantee that the work shall be free from any defects in workmanship for a period of not less than ONE (1) year from the date of Final Completion. Any and all written manufacturers warranties for materials supplied must be provided to the City Project Manager before final payment will be authorized.

12. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.
13. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any vendor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of ONE (1) year and bid debarment for a period of up to THREE (3) years for serious contract failures.
14. **VENDOR REPRESENTATIONS.** Vendor expressly represents that:
 - A. Vendor has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Vendor under this Agreement.
 - B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
 - C. Vendor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - D. Vendor is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Vendor's own investigation.
 - E. **Public Entity Crimes.** Neither Vendor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Vendor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public

entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

15. **VENDOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:
 - A. Vendor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Vendor shall be solely responsible for the means, methods, techniques, sequences, procedures, and safety precautions or programs incident thereto.
 - C. Vendor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
 - D. Vendor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
 - E. Vendor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Vendor and City may otherwise agree in writing.

16. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Vendor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.

17. **COMMERCIAL AUTO LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Vendor with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Vendor shall name City as an additional insured under the insurance policy.

18. **GENERAL LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
 - A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
 - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
 - C. Coverage for contractual liability is also required.

D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Vendor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.

19. **WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY.** Vendor shall procure and maintain, for the life of this Agreement, Workers’ Compensation insurance and employer’s liability insurance in amounts required by applicable statutes. Vendor shall ensure any and all subcontractors have coverage as required by applicable statutes. Vendor is not required to name City as an additional insured under the policies, but a subrogation waiver endorsement is required. Exceptions and exemptions may be allowed by City’s HR/Risk Director, so long as they are in accordance with Florida Statute.

20. **MISCELLANEOUS INSURANCE PROVISIONS.**

A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Vendor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Vendor’s interests or liabilities, but are merely minimums. No insurance is provided by the City under this contract to cover Vendor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a “Claims Made” form is not acceptable without consultation with City of Ocala Risk Management.

B. Deductibles. Vendor’s deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City. Vendor is responsible for the amount of any deductible or self-insured retention.

C. Certificates of Insurance. Vendor shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least A, showing the “City of Ocala” as an Additional Insured. Shown on the certificate as the certificate holder should be: **City of Ocala, Contracting Department- 3rd FL, 110 SE Watula Ave, Ocala, FL 34471.** Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation.

*Non-rated insurers must be pre-approved by the City Risk Manager.

- D. Failure to Maintain Coverage. In the event Vendor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Vendor under this Agreement, Vendor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Vendor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

- 21. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
- 22. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any vendor, subcontractor, or of any of their agents or employees.
- 23. **DELAYS AND DAMAGES.** The Vendor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the Agreement. The Vendor also agrees that any such delay, inefficiency, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.
- 24. **INDEPENDENT CONTRACTOR STATUS.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor nor its agents or employees shall have employee status with City. Nothing in this

Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Vendor in its performance of its obligations under this Agreement.

25. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor to perform its obligations under this Agreement.
26. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
27. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Vendor under this Agreement be abandoned, or should Vendor become insolvent, or if Vendor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The Project Manager's certification as to the amount of such liability shall be final and conclusive.
28. **PUBLIC RECORDS.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor shall:
 - A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all

applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

29. **AUDIT.** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
30. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
31. **E-VERIFY.** In accordance with Executive Order 11-116, Vendor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Vendor shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.
32. **CONFLICT OF INTEREST.** Vendor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Vendor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
33. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand

on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

34. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
35. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its agents, and employees.
36. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
37. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Vendor:

Service and Technology Network Solutions, Inc.
Attention: David Perdue
9288 SW 38th Avenue
Ocala, Florida 34474
Phone: 352-274-6689
E-mail: dperdue1959@yahoo.com

If to City of Ocala:

Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8366 Fax: 352-690-2025
E-mail: tkimball@ocalafl.org

Copy to:

Robert W. Batsel, Jr., Esquire
Gilligan, Gooding, Franjola & Batsel, P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-867-7707 Fax: 352-867-0237
E-mail: rbatsel@ocalalaw.com

38. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
39. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
40. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
41. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion

County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

- 42. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
- 43. **MUTUALITY OF NEGOTIATION.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
- 44. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
- 45. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- 46. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
- 47. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
- 48. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
- 49. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no

other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

50. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on 11 / 23 / 2020.

ATTEST:

CITY OF OCALA

Angel B. Jacobs

Jay A Musleh

Angel B. Jacobs
City Clerk

Jay A. Musleh
City Council President

Approved as to form and legality:

SERVICE AND TECHNOLOGY NETWORK SOLUTIONS, INC.

/s/ Robert W. Batsel, Jr.

David G. Perdue

Robert W. Batsel, Jr.
City Attorney

Signature

Service and Technology Network Solutions

Printed Name

Owner

Title

Exhibit A- Scope of Work

Contractor will install conduit as needed and requested by the City of Ocala. The conduit will be installed using plow, hand dig, missile or directional bore method with minimum interruption and inconvenience to the public, within and around the work area. Contractor will provide all labor, materials, equipment and supplies necessary to perform this work with the exception OFN has specified below.

City Project Manager and Contact Information for Contractor

All work shall be coordinated through City Project Manager William Weakland, (352) 401-3999, E-Mail: wweakland@ocalafl.org.

Vendor must provide a valid telephone number and address to the City Project Manager. The phone must be answered during normal working hours, or voicemail must be available to leave a message.

Ocala Fiber Network ("OFN") Outside Fiber Plant

- Vendor shall install conduit for various fiber installations as requested by the City, by and through, Ocala Fiber Network ("OFN").
- The conduit system shall be installed using plow, hand dig, missile or directional bore method for OFN with minimum interruption and inconvenience to OFN customers, within and around the work area.
- Vendor shall install splice cabinets and associated equipment.
- Vendor shall pull single or multiple cables and tracer wire in the installed conduit.
- Vendor shall direct buried service drops upon request.
- Vendor will provide all labor, conduit materials, equipment and supplies necessary to perform this work excluding fiber and tracer wire, splice boxes, Network Interface Device (NID), 1/2' PVC and pedestals, vaults or any other material if required, which will be provided by OFN.
- All work shall be coordinated with the City Project Manager.

Vendor Responsibilities

- Vendor is responsible for obtaining all utility locates prior to excavating and/or boring any conduits. The City will obtain all applicable permits.
- Vendor will adhere to all FDOT and Marion County right of way regulations. MOT equipment to be supplied by Vendor.

Exhibit A- Scope of Work

- Vendor shall keep all disturbances of property to a minimum and will return all excavated areas to "pre-excavation" condition after installation of the conduit system. This may require equivalent sod and or fill dirt to be installed. Before and after pictures are required.
- Sludge will not be permitted to be discharged on the ground at any time. Disposal of the sludge is the responsibility of the Vendor and must be disposed of in a proper manner.
- Vendor's vehicles must have the company and OFN logo visible on the outside of each vehicle. OFN logo must be removed during non-working hours. All workers must wear a company shirt or name badge with the company name.
- Vendor's crews working on City jobs must have a local contact number or 800 telephone number.
- Any additional PVC or miscellaneous fittings will be reimbursed at cost by prior approval of Project Manager. Vendor shall submit supplier invoices to City for reimbursement at cost for these items.
- Vendor is required to report any damages immediately to the City Project Manager and must provide pictures of damage before and after repair. Vendor must repair all damages at no additional cost to the City.
- OFN reserves the right to make any necessary repairs and charge the Vendor for unresolved damages within five (5) days of notification.

Project Timeline

- All work must be completed per Notification to Proceed (NTP). The number of days to complete a work order will be agreed upon between the Vendor and OFN. Failure to complete a job in the stated time will result in a default notice being issued.
- For Emergency work, the Vendor must have available staff on site and prepared to begin work within 2 hours of notification (this includes storm related emergencies). If emergency work is not completed or staff is not on site by contract timelines, the contract will be considered in default.
- Vendor must be able to mobilize any projects within ten (10) days of Notification to Proceed (NTP).

Exhibit A- Scope of Work**OFN Conduit Specifications**

- All conduits shall be orange in color, SDR 13.5 wall rating and minimum 1.25 ID. The actual conduit run location, number of conduits per run, depth and the length of each conduit run will be defined by drawings for each job. All conduit routes shown on the drawing must be followed unless written permission from the City Project Manager has been obtained. All conduits must include pull strings.
- Typical conduits must be buried between twenty-four inches (24") and forty-eight inches (48") deep (all FDOT and Marion County regulations apply).
- The Vendor will be responsible for installing a five-foot (5') section of Sch. 40 PVC prior to 90% sweep at each stub up location. (PC fusion by poly water upon request) will be used at transition from HDPE to PVC pipe; sweeps will be a minimum of twenty-four inches (24") radius, and all stub-ups must be 12" above grade. Where conduit stub-up locations fall inside existing pedestal/locations the conduit will only rise three inches (3") above ground.
- The Vendor shall be responsible for installing a supplied Network Interface Device (NID) and 1/2' PVC on the outside wall and fishing supplied fiber to agreed-upon location or point of service (POS).

Working Hours

Scheduling of services will be coordinated with the City's Project Manager.

Changes to Work in Progress

Vendor shall not make changes to work in progress, including designs or quoted projects without the express written permission of the City Project Manager prior to work being performed.

Technical Specifications

- Poles may be located in areas inaccessible by vehicles.
- The Vendor will be responsible for relocating Ocala Fiber Network (OFN) ADSS fiber optic communication lines. This may require pulling in fiber from storage on other structures.
- The Vendor must notify Ocala Fiber Network prior to any customer interruption of internet service that takes place because of Vendor's work.

Exhibit A- Scope of Work**Code Requirements**

The Vendor shall observe ALL the following:

- Occupational Safety and Health Code (latest edition)
- Applicable power and telephone pole attachment agreements
- Applicable city, county and state ordinances
- National Electric Safety Code (latest edition)
- National Electric Code (latest edition)
- Manufacturers specifications
- Call for 811 locates on all underground work performed.
- The employees of the Vendor shall wear suitable work uniforms as defined by OSHA (hard hats, flame retardant shirts, bucket harnesses, etc.) and meeting Manual on Uniform Traffic Control Devices (MUTCD) and National Electrical Safety Code (NEC) requirements, and thoroughly follow

City safety policy (policy is available upon request) as indicated for work conducted near an energized work environment and be as clean and in as good appearance as the job conditions permit.

Licensure Requirement

Must be a State of Florida Electrical or Underground Utility & Excavation Contractor to perform all work outlined in this scope of work

Item #	Description	UOM	Unit Cost
1	1.25" conduit - Trenching	LF	\$6.75
2	1.25" conduit - Hand dig	LF	\$10.00
3	1.25" conduit - Plowed	LF	\$6.75
4	1.25" conduit - Backhoe	LF	\$10.00
6	1.25" conduit - Missile-Stitch Bore	LF	\$6.75
7	1.25" conduit - Directional	LF	\$10.00
8	2" conduit - Trenching	LF	\$6.75
9	2" conduit - Hand dig	LF	\$12.50
10	2" conduit - Plowed	LF	\$6.75
11	2" conduit - Backhoe	LF	\$12.50
13	2" conduit - Missile-Stitch Bore	LF	\$8.25
14	2" conduit - Directional	LF	\$12.50
15	1.25" Stub-up	EA	\$30.00
16	2" Stub-up	EA	\$37.50
17	Install U-Guard at Pole	EA	\$25.00
18	Fiber Pedestal placement (Dog House)	EA	\$75.00
19	12X20 Flush Vault placement	EA	\$45.00
20	17X30 Flush Vault placement	EA	\$55.00
21	24X36 Flush Vault placement	EA	\$65.00
22	Pulling fiber in conduit	LF	\$0.80
23	Pulling tracer in conduit	LF	\$0.10
24	Sod	SF	\$2.50
25	Asphalt (1" Thick)	SF	\$5.50
26	Cement (4" Thick)	SF	\$2.75
27	Labor Cost to Dig up/Search for Conduit	HR	\$85.00
28	Wall Fish fiber to Point of Service	EA	\$160.00
29	Miscellaneous installation of equipment (pole or pad mount)	HR	\$85.00
30	Install service drop up to 125ft direct buried	EA	\$65.00
31	Install service drop over 125ft direct buried	LF	\$0.85
32	Pulling additional fibers in conduit simultaneously	LF	\$0.40
33	Emergency hourly rate. The City may need contractors services with less than 8 hours' notice, in the event of an emergency. Provide the hourly rate for emergency work.	HR	\$175.00

TITLE	FOR REVIEW AND EXECUTION - Services Agreement - Aerial Fiber...
FILE NAME	FOR COUNCIL - Ser...l Installatio.pdf
DOCUMENT ID	4d24edcd28e91cdd208d72584d2a517531d4708f
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

11 / 18 / 2020

14:52:25 UTC-5

Sent for signature to Robert W. Batsel, Jr. (rbatsel@ocalalaw.com), Service and Technology Network Solutions (dperdue1959@yahoo.com), Jay A. Musleh (jmusleh@ocalafl.org) and Angel B. Jacobs (ajacobs@ocalafl.org) from drobinson@ocalafl.org
IP: 216.255.240.104



VIEWED

11 / 19 / 2020

21:57:59 UTC-5

Viewed by Robert W. Batsel, Jr. (rbatsel@ocalalaw.com)
IP: 216.255.247.51



SIGNED

11 / 19 / 2020

22:05:05 UTC-5

Signed by Robert W. Batsel, Jr. (rbatsel@ocalalaw.com)
IP: 216.255.247.51



VIEWED

11 / 22 / 2020

12:21:23 UTC-5

Viewed by Service and Technology Network Solutions (dperdue1959@yahoo.com)
IP: 174.253.160.45

TITLE	FOR REVIEW AND EXECUTION - Services Agreement - Aerial Fiber...
FILE NAME	FOR COUNCIL - Ser...l Installatio.pdf
DOCUMENT ID	4d24edcd28e91cdd208d72584d2a517531d4708f
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



11 / 23 / 2020
10:42:20 UTC-5

Signed by Service and Technology Network Solutions
(dperdue1959@yahoo.com)
IP: 67.233.177.90



11 / 23 / 2020
11:47:24 UTC-5

Viewed by Jay A. Musleh (jmusleh@ocalafl.org)
IP: 162.212.251.176



11 / 23 / 2020
11:47:44 UTC-5

Signed by Jay A. Musleh (jmusleh@ocalafl.org)
IP: 162.212.251.176



11 / 23 / 2020
11:48:51 UTC-5

Viewed by Angel B. Jacobs (ajacobs@ocalafl.org)
IP: 216.255.240.104



11 / 23 / 2020
11:51:20 UTC-5

Signed by Angel B. Jacobs (ajacobs@ocalafl.org)
IP: 216.255.240.104



11 / 23 / 2020
11:51:20 UTC-5

The document has been completed.