

Construction Agreement

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT, made and entered into this ____ day of July A.D., 2019, by and between Gulf Coast Fiber Services, a Texas Limited Liability Corporation, of the County of Montgomery and State of Texas, acting through Earl Epps, its Director of Operations, hereinafter termed "Contractor" and the City of Seabrook, a home-rule municipal corporation, organized and existing under the laws of the State of Texas, acting through its City Manager or other duly authorized designee Texas, hereinafter termed "City."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City and Contractor, Contractor hereby agrees to commence and complete performance of the work specified below:

Extension of the City Fiber Optic Infrastructure from the current endpoint, located near the Seabrook Volunteer Fire Department 1850 E. Meyer Ave, Seabrook, TX, 77586, and the following locations:

- Ground level water storage tank at 2501 Lakeside Drive
- Water Well #1 at 2101 Humble Drive
- Repsdorph Road elevated water storage tank
- Red Bluff Road water meter vault
- Water Well #3 at Carmel Wood Drive
- Friendship Park Elevated Storage Tank

and all extra work in connection therewith, under the terms and conditions as stated in this Agreement, and at his (or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the work specified above, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with this Agreement, and in accordance with the plans, which includes all maps, plats, blueprints, and other drawings and printed or written explanatory matter thereof, and the Specifications therefore (all collectively referred to herein as "the Contract Documents"), all of which are made a part hereof and collectively evidence and constitute the entire contract.

Contractor agrees to perform the work and City agrees to pay Contractor the total of three hundred fifty-four thousand seven hundred and ninety dollars (\$354,790.00) for completed and accepted work as set forth and adjusted in accordance with the terms of this Agreement.

City and Contractor hereby agree to the following additional terms and conditions:

1. Prior to Performance of Work

(a) *Examination of Contract and Site.* Contractor specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed work and is thoroughly familiar with the nature and location of the work, the confirmation of the ground and soil, the nature of any structures, the character quality, and quantity of the material to be utilized, the character of equipment and facilities for and during the prosecution of the work, the time needed to complete the work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the work under this Agreement, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper.

(b) *Continuing Obligation.* Before undertaking each part of the work, Contractor shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. Contractor shall promptly report in writing to City's representative any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from City's Representative before proceeding with any Work affected thereby. Contractor shall be liable to City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

(c) City will not be responsible for additional expenses incurred by Contractor to perform extra work necessitated by conditions which were discoverable by Contractor prior to beginning work and which Contractor failed to include in its proposal.

2. Construction Responsibilities

(e) *Commencement and Completion Dates.* Contractor hereby agrees to commence work on or after the date established for the start of work as set forth in the notice to proceed and complete all work within the time stated in this Agreement. The notice to proceed shall be given in writing by the City, and no work shall commence prior to the City issuance of a notice to proceed. The work embraced by this Agreement shall be completed within 180 days of issuance of notice to proceed.

(a) *Specifications.* Contractor shall construct the improvements required by the description of work set out in the Contract Documents ("the Improvements") in a competent and efficient manner in accordance with the procedures, specifications and standards contained in the Contract Documents and all regulations, ordinances or specifications applicable to such Improvements, such specifications, standards, regulations and ordinances being expressly

incorporated herein by reference and being made a part of the agreement as though written herein.

(b) *Unforeseen Conditions.* Contractor must notify City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Agreement. If it is determined by City that such conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the work, City's representative will determine whether or not an equitable adjustment in the price or time for performance will be made, taking into consideration Section 1 and other applicable provisions of this Agreement. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the price and time period will not be adjusted.

(c) *Protection of Lines.* Notwithstanding any other provision of this Agreement, Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the work area. **Contractor shall indemnify or reimburse such expenses or costs (including fines that may be levied against City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** City reserves the right to repair any damage Contractor causes to such utilities at Contractor's expense. If a public line and/or customer service line is damaged by Contractor, Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to City's representative.

(d) *Good and Workmanlike Manner.* All work on the Improvements shall be performed in a good and workmanlike manner and to the satisfaction of the City or its representative. City shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of specifications.

(e) *Facilitate Inspection.* Contractor shall furnish City or City's representative with every reasonable facility for ascertaining whether or not the work performed was in accordance with the specifications applicable thereto. Any work done or materials used without suitable inspection by City may be ordered removed and replaced at Contractor's expense. Upon failure of the Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow any other request or order of City or City's representative, City shall notify the Contractor of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of City, City shall have no obligation under this agreement to approve or accept the Improvements.

(f) *Means and Methods of Construction.* Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

City may reject any of the Improvements for which, in the judgment of the City, the Improvements were not constructed in accordance with City specifications.

(g) *Work Stoppage.* The City shall have the right to order the work of the Contractor wholly or partially stopped:

- (1) if any of the materials furnished or the work being done is not in strict accordance with this Agreement;
- (2) until any objectionable person or material is removed from the premises; or
- (3) if any portion of the work is being performed so as to create a hazardous condition.

Such stoppage or suspension shall neither invalidate any of Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will extra charges be allowed the Contractor by reason of such stoppage or suspension.

(h) *Permits and Licenses.* The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work. All City Permits shall be fee free. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

(i) *Royalties and Licensing Fees.* The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the project. It shall defend all suits or claims for infringement of any patent rights.

(j) *Safety Precautions.* Safety precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Fire Department and City Code Enforcement.

(k) *Warn of Hazards.* The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

(l) *Failure of Safety Devices.* The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or

nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

(m) Indemnity for Safety Failure. The Contractor shall indemnify City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that relate to or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment no matter where fault or responsibility lies. Such indemnity shall indemnify and protect the City from the consequences of the City's own negligence, whether that negligence is the sole or concurring cause of the injury, death, or damages.

3. Insurance and Indemnification

(a) Insurance. Contractor shall provide for insurance and workers compensation coverage in accordance with the requirements applicable to contractors as provided for in Exhibits "A" and "B", the provisions of which are expressly incorporated herein by reference. Evidence of required insurance shall be provided by Contractor and approved by City before work is commenced.

(b) Indemnification. Contractor shall INDEMNIFY, DEFEND, AND HOLD HARMLESS, City, its officers, agents and employees from and against any and all suits, actions, claims, damages, losses, and expenses of any character, name and description, including, but not limited to, attorney's fees, arising out of or resulting from the operations of Contractor, his agents, employees or subcontractors; or on account of any negligent act or fault of Contractor, his agents, employees or subcontractors in construction of the Improvements, including, but not limited to, any such claim, damage, loss or expense attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage. Nothing herein shall waive any governmental immunity available to the city under Texas law and any defenses of the parties under Texas law.

4. Acceptance and Payment

(a) Assurance of Payment. Prior to acceptance of the Improvements by City, Contractor shall furnish a written affidavit, stating all bids, charges, accounts or claims for labor performed and material furnished in connection with the construction of the Improvements have been paid in full and that there are no unreleased recorded liens filed against the Improvements, or land to which they are affixed.

(b) *Retainage, Final Payments.* As security for the faithful completion of the Improvements, Contractor and City agree that City shall retain ten percent (10%) of the total dollar amount of the contract price until after final approval or acceptance of the Improvements by City. City shall thereafter pay Contractor the retainage, only after Contractor has furnished to the City satisfactory evidence that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in performance of the work have been paid or otherwise satisfied.

(c) *Encumbrances.* Contractor shall promptly pay all workmen and materialmen and shall not allow liens to be placed on the Improvements. Upon completion and approval or acceptance of the Improvements by City, the Improvements shall become the property of City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Improvements, any claim, lien, charge or encumbrance is made, or found to exist, against the Improvements, or land dedicated to the City, to which they are affixed, Contractor shall upon notice by City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to insure payment of such claim, lien, charge or encumbrance.

(d) *Maintenance Bond.* Prior to approval or acceptance of the Improvements by City, Contractor shall furnish a maintenance bond in form and substance acceptable to City, in the amount of ten percent (10%) of the contract amount of the Improvements, insuring the repair and replacement of all defects due to faulty material and workmanship that appear within one (1) year from the date of acceptance. The bond shall be in favor of City and shall be executed by an approved surety company authorized to do business in the State of Texas.

(f) *Payment.* Upon proper completion of the Improvements in accordance with this Agreement and the Contract Documents, City agrees to accept the Improvements and pay Contractor from available current funds in accordance with the terms and pricing set forth in the proposal and the Contract Documents.

(g) *Work Rejection.* All work deemed not in conformity with this Agreement as determined by City, in its sole discretion, may be subject to rejection by City. City may reject any work found or determined by it to be defective or not in accordance with this Agreement. City may reject said work or any portion thereof regardless of the stage of its completion or the time or place of discovery of such errors. Further, City may reject said work regardless of whether City has previously accepted the work through oversight or otherwise. Neither observations by City nor inspections, tests, certificates or approvals made by City shall relieve Contractor from its obligation to perform the work in accordance with the requirements of this Agreement and related documents.

(h) *Remedial Work.* If the work or any part thereof is rejected by City, it shall be deemed by City as not in conformity with the Agreement and related documents. Any remedial

action required, as set forth herein, shall be at the Contractor's expense, as follows:

1. Contractor may be required, at City's option, after notice from City, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
2. If City deems it expedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum shall be made by City at City's sole discretion.

(i) *Changes to work or price.* No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid except upon the prior written order from authorized personnel of the City.

5. Warranties, Remedies and Damages

(n) *Defects Appearing After Acceptance.* Neither the final payment nor any acceptance nor any provision of this Agreement shall relieve Contractor of any responsibility for faulty workmanship or materials. At the option of City, Contractor shall remedy any defects thereto and pay for any damage to other work resulting therefrom, which may appear after final acceptance of the work.

(o) ***Warranty.*** Upon final acceptance of the work by City, Contractor warrants for a period of one (1) year as follows:

(1) The Contractor warrants to the City that all materials provided to the City under this Agreement shall be new unless otherwise approved by the City and that all work will be of a good quality, free from faults and defects, and in conformance with this Agreement and related documents.

(2) All work not conforming to these requirements, including but not limited to substitutions not properly approved and authorized, may be considered defective.

(3) This warranty is in addition to any rights or warranties expressed or implied by law and consumer protection claims arising from misrepresentations by Contractor.

(p) *Contractor to Correct.* If within one (1) year after the final acceptance of the work by City or within such longer period as may be prescribed by law or the terms of any applicable special warranty, if any of the work is found or determined by City to be defective, including obvious defects, or otherwise not in accordance with this Agreement, Contractor shall correct it promptly.

(q) *Not Exclusive Remedy.* After receipt of written notice from City to begin corrective work, Contractor shall promptly begin the corrective work. The obligation shall survive the termination of this Agreement. The guarantee shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to either the warranty or guarantee period.

(r) *City may Correct.* If within ten (10) days after City has notified Contractor of a defect, failure, or abnormality in the work, Contractor has not started to make the necessary corrections or adjustments, City is hereby authorized to make the corrections or adjustments, or to order the work done by a third party. The cost of the work shall be paid by Contractor.

(s) *Contractor to Pay Costs.* The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects, shall be paid by the Contractor.

(t) *Liquidated Damages.* The time for the final completion of the work described herein is a reasonable time, taking into consideration all conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadline for final completion are fixed and agreed upon by the Contractor because of the impracticality and extreme difficulty in fixing and ascertaining actual damages that the City in such event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment and from final payment.

(u) *Delay Damages.* If the Contractor should neglect, fail, or refuse to finally complete the work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement, that City may withhold permanently from the Contractor's total compensation the sum of Two Hundred and Fifty Dollars (\$250.00) for each and every calendar day that the Contractor shall be in default after the time for finally completing the work, not as a penalty, but as liquidated damages for the breach of this Agreement.

6. Termination

(a) *Termination for Cause.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) calendar days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

- (1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or

(2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or

(3) If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

(4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or

(5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

(b) *Termination for Convenience.* The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

(c) *Payment on Termination For Convenience.* In the event of termination for convenience, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.

(d) *Right To Complete.* If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by the Contractor which fails to meet agreement requirements.

(e) *Close Out.* After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper

closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City, do the following:

- (1) Stop the work on the date and to the extent specified in the notice of termination;
- (2) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (4) Assign to City, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) With the approval of City, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
- (6) Deliver to City, when directed by City, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City and transfer title to such property to City to the extent not already transferred; and/or
- (7) In the event of such termination, there shall be an equitable reduction of the fixed fee to reflect the reduction in the work. Costs incurred after the effective date of the notice of termination shall not be treated as reimbursable costs unless they relate to carrying out the non-terminated portion or taking closeout measures approved by the City.

(f) *Breach of Contract.* The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate or terminate the Contractor's obligations under this Agreement.

(g) *Completion of Work.* Wherein the Contractor has abandoned the project or the City has terminated the contract for cause, then the City at its option may provide for completion of the work in the following manner:

- (1) The City may employ such force of workers and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment,

tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor.

(2) Should the cost to complete the work exceed this Agreement price and the Contractor fails to pay the amount due to the City within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, City may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City may elect. City shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

(3) In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

(h) Damages. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

(1) If the Contractor shall fail to remedy any default after written notice thereof from City, as City shall direct; or

(2) If the Contractor shall fail for any reason, other than the failure by City, to make payments called upon when due; or

(3) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

6. **Special Provisions**

(a) Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement.

(b) Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

7. **General Provisions**

(a) *Agreement Controlling.* The provisions of this Agreement shall control over any conflicting provision of any contract between City and Contractor as to the construction of the Improvements.

(b) *Venue.* The parties herein agree that this Agreement shall be enforceable in Harris County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Harris County, Texas.

(c) *Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

(d) *Independent Status.* It is mutually understood and agreed by and between City and Contractor that Contractor is an independent contractor and shall not be deemed to be or considered an employee of the City of Seabrook, Texas, for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other. City shall not have supervision and control of Contractor or any employee of Contractor.

(d) *Tax Exemption.* This Agreement is entered into by an organization which qualifies for exempt revisions pursuant to the Texas Tax Code, Sections 151.301, 151.307 and 151.309. The Contractor must divide the price for materials that will be incorporated into the capital improvement project and the price for skill and labor into separated contracts. Therefore, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate which shall enable the Contractor to buy the materials to be incorporated into the completed capital project and then resale the aforementioned materials for the City without paying the tax on the materials at the time of purchase.

(e) *Amendment.* No amendments to this Agreement shall be effective and binding until it is reduced to writing and signed by duly authorized representatives of both parties.

(f) *Litigation Costs.* In the event of litigation, the Contractor agrees to pay and shall pay all of the attorney's fees, court costs and other litigation costs of City.

(g) *Texas Law.* This Agreement has been made under and shall be governed by the laws of the State of Texas.

(h) *Authority to Enter Contract.* Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations or other legal entity.

(i) *Waiver.* Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the City party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

(j) *Headings.* The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or Intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

(k) *Invalidity.* If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

(l) *Written Notice.* Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least ten (10) days written notice to the other parties in writing of such change.

(m) *Entire Agreement.* It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with

any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

GULF COAST FIBER SERVICES- “Contractor”

Earl Epps
Earl Epps, Director of Operations

CITY OF SEABROOK, TEXAS- “City”

Thomas G. Kolupski, Mayor

ATTEST:

Robin Hicks, TRMC, City Secretary