

Master Contractor Agreement

This Master Contractor Agreement (the “Agreement” or the “Contract”) is entered into between the City of Angleton (“the City”) and Muraca Fiber & Telecommunications (“Contractor”). City of Angleton and Contractor shall be referred to collectively as “the Parties”. This contract may also be referred to as the “Agreement,” “Master Contract” or the “Prime Contract.” This contract shall become effective upon the date of its execution.

In consideration of the mutual promises set forth in this Agreement it is agreed by and between the City and Contractor as follows:

- A. This Master Contractor Agreement shall control all Work, as defined below, performed by Contractor on behalf of the City either assigned by the City pursuant to this Agreement and/or a work order in a form substantially similar to the work order attached as Exhibit A (“Work Order” or “Work Orders”), and whether or not a Work Order has been issued or signed, or as otherwise agreed to between the Parties in writing.
 - (1) Contractor shall furnish all work, materials, supplies, labor, services and equipment required for the construction and completion of certain improvements, alterations or repairs (known as the “Project” or the “Work”) and as more fully detailed on the Work Order.
 - (2) The Work Order shall identify the dollar amount and scope of the Work to be performed by Contractor and any Project specified terms. The City may issue and Contractor agrees to do Work pursuant to multiple Work Orders. Each Work Order will be incorporated into this Master Contractor Agreement

- B. The Work is described more particularly in the following documents which are incorporated into this Agreement, and have full force and effect as if set out verbatim herein, and are known as the Contract Documents:
 - (1) This Agreement;
 - (2) Work Order;
 - (3) Construction documents developed pursuant to this Agreement or the Work Order; and,
 - (4) Contractors’ and material suppliers’ bids, proposals or quote obtained pursuant to this agreement.
 - (5) Bid documents, attachments and exhibits;
 - (6) Bid addendums, if applicable;
 - (7) City’s Definitions, Terms and Conditions;
 - (8) Contractors Submission.

In case of conflict between the terms of this Agreement and the Contract Documents, the terms of the Agreement shall prevail in the order as listed above.

- C. Commencement Date. The date of commencement of the Work shall be the date of execution of this Agreement. The commencement of Work start date is subject to change only by written agreement between the Parties.
- D. Installation Services, Engineering Services, and Maintenance Agreement.
 - (1) Installation. Installation Services shall be turn-key and include but not be limited to the design, trenching, installation, testing, troubleshooting, documentation, and ongoing maintenance and restoration of the system installed.
 - i. Installation shall be coordinated with and approved by the City's Technology representative. Any required traffic control during installation shall be the responsibility of the Contractor as stated in Section M.
 - ii. Contractor shall manage the project from start to finish.
 - (2) Engineering. Contractor shall provide engineered drawings of the fiber optic system. Contractor will perform all services under this contract to the prevailing engineering professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. If Contractor is representing that he/she has special expertise in one or more areas to be utilized in this contract, then Contractor agrees to perform those special expertise services to the appropriate local, regional or national professional engineering standards. Contractor will provide services necessary for the construction of improvements to City's fiber optic system, the location and extent of which is as follows: See Attachment A.
 - (3) Maintenance. Maintenance shall be five (5) consecutive (12) twelve month periods from the execution date. The agreement shall be renewed each year automatically for an additional twelve (12) month period of time, unless one party terminates such agreement in writing 30 days prior to the expiration of the then current term.
 - i. Contractor shall provide all maintenance and support services to ensure the operation of the fiber system, including, without limitation, preventative maintenance, routine and ordinary maintenance and support services, repair, outside construction, storm damage, all other factors that affect the operability, functionality, or reliability of the fiber system, emergency restoration services and all other maintenance services.
 - ii. City seeks restorative services of fiber system within eight (8) hours of outage notification from City.
- E. Review of Performance. The City reserves the right to review the Respondent's performance and that of any subcontractor or independent contractor retained by the Contractor at the end of each (12) twelve month period and cancel all or part of the agreement(s) or continue the agreement(s) through the next period.
- F. Time for Completion. Contractor shall provide the City with a Project Timeline. Contractor shall substantially complete the Project within the time period detailed in the Contractor's Project Timeline or within the time period detailed within the other Contract Documents, whichever is

earlier. The timeline for completion is subject to change only by written agreement between the Parties.

G. Contract Amount. The City agrees to pay Contractor the sum of \$113,574.00 (One-Hundred Thirteen Thousand Five Hundred and Seventy-Four Dollars and Zero Cents) as detailed in a Work Order for the completion of the Work (Contract Amount) to be paid as follows:

- (1) Payments will be made in accordance with the Texas Prompt Payment Law, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Contractor within thirty (30) days after the acceptance of supplies, materials, equipment, or the day on which the performance of services was completed or the day, on which the City receives a correct invoice for the supplies, materials, equipment or services, whichever is later. The Contractor may charge a late fee which shall not be greater than that which is permitted by Texas Law for payments not made in accordance with this prompt payment policy; however, this policy does not apply to payments made by the City in the event:
 - i There is a bona fide dispute between the City and Contractor concerning the supplies, or equipment delivered or the services performed that cause the payment to be late; or
 - ii The terms of a federal agreement, grant, regulation, or statute prevent the City from making a timely payment with Federal Funds; or
 - iii There is a bona fide dispute between the Contractor and subcontractor or independent contractor retained by Contractor or between a subcontractor or independent contractor retained by Contractor and its suppliers concerning supplies, material, or equipment delivered or the services performed which caused the payment to be late; or
 - iv The invoice is not mailed to the City in strict compliance with instructions, if any, on the purchase order or agreement or other such contractual agreement.
- (2) Promptly following execution of this Agreement or a Work Order, Contractor shall submit to the City for approval, a breakdown of the Contract Amount itemizing material and labor for the various classifications of the Work prepared in such form and supported by such data to substantiate its accuracy, as the City may require. The breakdown will be used as a basis for reviewing the Contractor's application for payment. Contractor's application for payment must be submitted in a form acceptable to the City.
- (3) The City shall make payments to the Contractor as the Work progresses, based upon invoices submitted by the Contractor that details the completion of the Work (e.g.- linear feet of cable laid) and in accordance with section (H)(1). Payment shall only be due for the portion of the Work completed to the satisfaction of the City. It is an express condition precedent to the Contractor's right to payment that payments shall be received by the City from the Owner or General Contractor. Within fifteen (15) days after receipt by City of Angleton of payment from the Owner or General Contractor, City of Angleton shall make payment in the amount and to the extent received from the Owner or General Contractor, less any applicable retainage or other set off. The Contractor's Affidavit and Waiver of Lien for prior payments

must be properly executed by an authorized representative of the Contractor and returned to City of Angleton prior to issuance of subsequent payments.

- (4) Invoices and payment requests received that are inaccurate or without substantiation will be held until corrected and substantiated, and then processed once corrected with the next round of invoice submittals per the requirements of the Contract Documents.
- (5) The Contractor shall, **if required**, additionally with each payment request, submit copies of certified payrolls to document the value of work-in-place and a Partial Release of Lien from all lower tier Contractor, third party payroll companies, and major material suppliers for which payment has previously been made to the Contractor by the City.
- (6) If the City, in its sole discretion, deems it necessary, the Contractor agrees to receive each of its progress payments and final payment in the form of multiple checks issued jointly between the Contractor's lower tier Contractors and major material suppliers and the Contractor. Lower tier Contractors that are to receive part or all of their progress payments by jointly payable check must additionally submit with their Payment Requests all invoices from each lower tier Contractor and major supplier, a Partial Release of Lien from any of its lower tier Contractors and major material suppliers for which payment has previously been made, and the net payments to be issued to each out of said jointly payable check. The City will not issue a joint check unless the City has notified the Contractor in writing first and has allowed Contractor seven (7) days to correct the issues.
- (7) An application of the Contractor for payment must be accompanied by written invoices and completed "As-Built" drawings of completed work..
- (8) Invoice submittal dates will be provided per project and will be outlined on the work order as to when invoices can be submitted.
- (9) All material and work covered by partial payments made shall not be construed as:
 - (a) relieving Contractor from the responsibility for the care and protection of materials and Work upon which payments have been made.
 - (b) relieving Contractor from the responsibility to repair or correct any damaged or defective Work.
 - (c) a waiver any rights of the City under this Agreement; or,
 - (d) a release of Contractor or its sureties from any obligation under this Agreement.
- (10) Contractor assumes full and exclusive responsibility for payment of all federal, state and local taxes or contributions that may be payable based on the compensation of Contractor or his employees, or on the compensation of any other person or persons engaged by Contractor in the performance of this Agreement or any part thereof, and agrees to reimburse the City for any such taxes or contributions which by law it may be required to pay.

(11) A price increase to the agreement shall not be permitted during the initial term, and any increase must be submitted in writing thirty (30) days prior to the start of the term.

H. Payments Withheld.

(1) The City may withhold payment to Contractor, to the extent reasonable, for:

- (a) any Work that is found by the City, in its sole discretion, to be below acceptable good and skillful quality or is not satisfactory or acceptable.
- (b) defective Work that is not in compliance with the Contract Documents.
- (c) claims filed by Contractor against the City.
- (d) claims or liens filed by a third party, including, but not limited to, Contractor's lower tier Contractors, materialmen or suppliers, subcontractors or independent contractors against Contractor or the City arising out of Contractor's Work hereunder or Contractor's failure to make payments for work performed pursuant to this Agreement.
- (e) failure of the Contractor to make payments properly to subcontractors, independent contractors or material suppliers, for their work, material, or labor.
- (f) Contractor's damage to the property of the City or property of others, or another Contractor's work, material or equipment for which Contractor is responsible.
- (g) claims or liens are filed against the Property at which the Project is located or against the City.
- (h) Contractor is in default of this Agreement.
- (i) Contractor's inability to complete the Work for the unpaid balance of the Contract Amount.
- (j) reasonable doubt that the Work will be functionally completed; or
- (k) other causes materially affecting Contractor's performance of this Agreement.

(2) When a cause for withholding payment is removed Contractor shall promptly resubmit an application for the portion of the Work for which payment was withheld.

I. Non-appropriation. The resulting agreement is a commitment of the city's current revenues only. It is understood and agreed the city shall have the right to terminate the agreement at the end of any city fiscal year if the governing body of the city does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by the city's budget for the fiscal year in question. The city may effect such termination by giving Contractor a written notice of termination at the end of its then current fiscal year.

- J. City's Right to Review. The City reserves the right to review the Contractor's performance and that of any subcontractor or independent contractor retained by the Contractor at the end of each twelve (12) month period and cancel all or part of the agreement(s) or continue the agreements(s) through the next period.
- K. Termination. If the agreement is terminated, for any reason, Contractor shall turn over all material, records and deliverables created to date by the Contractor and any subcontractor or independent contractor retained by the Contractor within fifteen (15) working days after completion of duties through the termination date.
- L. Materials. The work under this agreement shall include the furnishing of all labor, tools, and equipment for performing all work required for the installation, termination and testing of fiber optic backbone cabling.
- M. Traffic Control. When work is required alongside City streets, the Contractor and any subcontractor or independent contractor retained by the Contractor shall take adequate precautions to warn motorists of their work and to place flagmen and/or other controls to ensure the continued safe and orderly flow of traffic through the work site. Traffic control patterns and devices shall be erected in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD).
- N. Restoration of public and private property: All public and private property affected by the work shall be restored to its original condition after the Work is substantially complete. Restoration shall include, but not be limited to, the following: removal of spoils and debris, repair of ruts, and replanting of grass or landscaping. The Contractor and any subcontractor or independent contractor retained by the Contractor shall make a reasonable effort to preserve and replant landscaping removed from within the limits of the City's easements. However, even if after taking prudent care the landscaping cannot be salvaged, the Contractor shall not be obligated to replace same.
- O. Substantial Completion.
- (1) When Contractor considers that the Work, or a portion of the Work which the City agrees to accept separately, is substantially complete (in accordance with the definition of Substantial Completion as defined below), Contractor shall prepare and submit to the City a comprehensive list of items to be completed or corrected and a schedule for completion which is acceptable to the City. Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on the list does not alter Contractor's responsibility to complete all Work in accordance with the Contract Documents.
 - (2) Upon receipt of Contractor's list under Paragraph O (1), the City will make an inspection to determine whether the Work or the designated portion is substantially complete. If the City inspection reveals any item which is not complete, Contractor shall promptly complete or correct the item disclosed by the City inspection.
- P. Final Completion and Final Payment.

- (1) "Substantial Completion" means the stage of completion, at which the Work is determined substantially completed by the City, in its sole discretion, but in no event past the date of the receipt of a Certificate of Occupancy on the Work.
- (2) After Substantial Completion, Contractor shall notify the City when the list of outstanding items and Work are complete, and the City will arrange a final inspection with the City or its representatives with the Contractor and the City.
- (3) Upon completion of the Work in full and strict conformity to the Contract Documents and the City's final acceptance, the City shall pay the unpaid balance of the Contract Amount less:
 - (a) any sum that maybe necessary to settle any claim the City may have against the Contractor or that may be necessary to settle any outstanding obligations of the Contractor or of its subcontractors or independent contractors under this Agreement; and,
 - (b) retainage, if retainage is withheld.
- (4) Neither the Certificate of Substantial Completion, nor final acceptance, nor final payment, nor any other provisions in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required to survive acceptance.
- (5) Unless otherwise provided in this Agreement, final acceptance by the City shall be made as promptly as practicable after completion and inspection of all Work required by this Agreement. Final acceptance shall be final and conclusive, except for latent defects, fraud, gross mistakes, or the City's rights under any warranty or guarantee.
- (6) Promptly after Final Completion Contractor shall:
 - (a) furnish the City with a Final Bills-Paid Affidavit and Conditional Waiver and Release on Final Payment in accordance the Texas Property Code; and,
 - (b) furnish the City a release of all claims against the City, whether of Contractor or of others, arising under and by virtue of this Agreement, other than such claims as may be specifically excepted by the Contractor from the operation of the release in stated amounts; and,
 - (c) deliver to the City an electronic copy of the As-Built Drawings and closeout documentation as defined in the specifications; and,
- (7) Contractor shall provide redline as-builds upon completion of their work on the project. The as-builds will need to be turned in with or before the final invoice. Boring Contractors must include depths and offsets in their as-builds.
- (8) Upon full satisfaction of Paragraphs P(1)-(7) the City shall pay Contractor the retainage amount within 31 days after receipt of a final invoice from Contractor and payment of such amount to the City by Owner or General Contractor. Contractor shall furnish the City final releases of all claims against the City, General Contractor and Owners from Contractor, all Contractors, and material suppliers within 10 days after receiving payment of the retainage.

Q. Safety of Persons and Property.

- (1) Contractor shall exercise and take all proper precautions for safety of, and shall provide all proper protection to prevent damage, injury, or loss to:
 - (a) personnel who perform the Work and other persons who may be affected by the Work.
 - (b) the Work and all materials and equipment, whether in storage or off site or under the care, custody, or control of Contractor; and,
 - (c) other property at the Work site or other sites, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures, and utilities not designed for removal, relocation or replacement in the course of construction.
- (2) When so ordered, the Contractor shall stop any part of the Work which the City deems unsafe until corrective measures satisfactory to the City have been taken. The Contractor agrees that it shall not have nor make any claim for damages arising from such stoppages. Should the Contractor fail to take appropriate corrective measures in a timely manner, the City may do so at the cost and expense of the Contractor and may deduct the cost and expense thereof from any payments due or to become due to the Contractor. Failure on the part of the City to stop unsafe practices shall in no way relieve the Contractor of its responsibility.
- (3) Contractor shall comply with all applicable Federal, State, Municipal and local laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for safety of persons or property or to protect them from damage, injury or loss.
- (4) Contractor shall assume full responsibility for compliance with the Occupational Safety and Health Administration regulations pertaining to trench safety systems. Contractor will be responsible for completion of additional detailed plans and specifications for trench safety to the extent that such detailed plans and specifications are necessary.
- (5) Neither explosives nor blasting shall be permitted as part of the Work unless properly permitted with applicable governing authority and approved, in advance, by the City and Contractor
- (6) Contractor shall designate one of its employees at the Work site as the person responsible for the prevention of accidents and notify City of Angleton of such designation. The employee designated will ensure Contractors employees are working in a safe manner with at minimum the safety requirements set forth by OSHA unless a job site requires additional safety requirements which will be outlined in the work order. Additionally, some projects may require safety plans, job hazard analysis sheets (JHA), and/or tool box safety meetings to be turned in daily or weekly. If this is required, it will be outlined in the work order.

R. Location and Protection of Utilities.

- (1) Contractor, within reason, shall be solely responsible for location and protection of any and all public lines and utility customer service lines in the Work area.

- (2) Location of utilities shown on plans are approximate only and do not necessarily indicate all utilities that maybe encountered during construction. Failure of a utility line to be indicated does not relieve the Contractor of responsibility to protect utility lines encountered. Contractor shall notify "One Call" and exercise due care to locate and to mark, uncover or otherwise protect all such lines within the limits of construction and any of Contractor's work or storage areas.

S. Inspections, Tests, and Correction of Work.

- (1) **Once installed, Contractor shall test the fiber system and provide a report to the City. City shall have thirty (30) days to test the fiber system and shall notify the Contractor of non-working areas.**
- (2) **Times and Places.** Except as otherwise provided in this Agreement, inspection and test by the City of material and workmanship, which Contractor hereby agrees is allowed by this Agreement, shall be made at reasonable times and at the site of the Work, unless the City determines that an inspection or test of material which is to be incorporated in the Work shall be made at the place of production, manufacture, or shipment of the material.
- (3) Contractor shall promptly furnish, without additional charge, all facilities, labor, and contracted material reasonably needed for performing such safe and convenient inspections and tests as may be reasonably required by the City. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.
- (4) **Continuing Responsibility.** No inspection or test shall relieve Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the City after acceptance of the completed Work.
- (5) **Code Inspections.** All inspections and tests of Contractor's Work and all other inspections which may be required by the Contract Documents, project permits and building codes and ordinances of the city the Project is located will be performed during the Contractors scope of work and at Contractor's expense. If the site of the Work is located outside the corporate limits of the City or in a city that does not require such inspections, Contractor shall hire an independent inspector(s) to perform inspections as otherwise required by the Contract Documents or at a minimum as would be required if the Work site were located in the closest city with a population over 50,000. All expenses for independent inspector may be reimbursed by the Contractor if this is required and not defined in scope of work.
- (6) **Rejected Material or Work.** Contractor shall, without charge, replace any contracted material or correct any workmanship found by the City, the Architect, the General Contractor, the Owner or any inspector not in conformance with applicable building code or the Contract Document requirements. Contractor shall promptly segregate and remove rejected material from the Work site. Contractor will be charged with the additional cost of any test or inspection of the replaced material or corrected workmanship. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the City may, after Contractor's failure to commence remedial work, within five (5) days of receipt of written notice from the City :

(a) replace such contracted material or correct such workmanship and charge the cost to the Contractor; or,

(b) terminate this Agreement.

(7) Covered Work.

(a) If the City and/or its representatives determine it is necessary or advisable, at any time before acceptance of the Work, to make an examination of Work already completed, by removing or tearing out installed materials, Contractor shall, on request, promptly furnish all necessary facilities, labor and material for such an examination.

(b) If, after the examination described in the immediately preceding paragraph, the Work was covered without the approval of the City or its representatives or if the Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors or independent contractors, Contractor shall be responsible for all the expenses of the examination and the reconstruction. If the covered Work is found to meet the requirements of this Agreement an equitable adjustment shall be made in the Contract Amount to compensate Contractor for the additional services involved in the examination and reconstruction.

T. Suspension of this Agreement. The City may order Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period as the City may determine.

U. Termination for Convenience of City of Angleton.

(1) The City may terminate Contractor's performance of the Work, in whole or part, whenever City of Angleton shall determine that such termination is in the best interest of the City in its sole discretion. Any notice of termination shall be delivered to the Contractor in writing specifying the extent to which performance of Work is terminated and the date upon which such termination becomes effective.

(2) After receipt of a notice of termination, the Contractor shall cooperate fully with the City in minimizing the cost to the City of such termination and as directed by the City:

(a) protect the completed Work and properties acquired for the Work.

(b) terminate or cancel incomplete subcontracts and purchase orders; and

(c) dispose of surplus materials and other properties.

(3) If the City terminates the Work, the Contract Amount shall be equitably adjusted to a sum which shall fairly compensate Contractor for all work completed and for all costs incurred (net of salvage) in part performance of the incomplete portions of the Work and for all costs incurred in connection with the termination, but exclusive of profit on the incomplete portions of the Work. In no event shall such sum be less than the portion of the Contract Amount allotted to the completed portion of the Work.

V. Termination for Contractor's Default.

- (1) If Contractor should refuse or fail to comply with the Contract Documents, fail to cure a default, or diligently perform the Work, or any separable part, with such diligence as will insure its completion within the time specified in the Contract, or should fail to complete the Work within the time required, the City may, by written notice to Contractor and without notice to its sureties, terminate Contractor's right to complete such part of the Work as to which there has been delay.
- (2) If the City terminates Contractor's right to perform the Work under Paragraphs U or V, the City may take over the Work, complete the Work, and may take possession of materials, and supplies as may be on the site of the Work that are necessary for completion of the Work.
- (3) Whether or not Contractor's right to proceed with the Work is terminated, Contractor and Contractor's sureties shall remain liable for any damage to the City resulting from Contractor's refusal or failure to complete the Work within the required time. Any such damages shall be paid by Contractor upon demand.
- (4) If the City terminates Contractor's right to perform the Work under Paragraph V, the resulting damage recoverable by the City will consist any increased cost incurred by the City in completing the Work and any liquidated damages the City suffers as a result of delay as may be assessed pursuant to the Contract Documents.
- (5) If after notice of termination of Contractor's right to proceed under the provisions of Paragraph V, it is determined that Contractor was not in default under this provision the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph U.

W. Material Breach.

- (1) In addition to the items of default listed elsewhere in this Agreement, the following shall also be deemed an act of default by Contractor and a material breach of this Agreement:
 - (a) Contractor fails to provide the Work in a good and workmanlike manner;
 - (b) Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper material;
 - (c) Contractor fails to make payment to its subcontractors or independent contractors or fails to furnish the City with lien waivers in accordance with this Agreement;
 - (d) Contractor stops work without the written consent of the City, which it may withhold in its sole discretion, for a period of 15 consecutive days;
 - (e) Contractor disregards laws, regulations or orders of any public authority having jurisdiction;
 - (f) Contractor otherwise materially fails to comply with a provision of this Agreement or fails to complete the Project during the time required, as extended; or

(g) Contractor files a voluntary petition in bankruptcy or is adjudicated a bankrupt of insolvent under present or future applicable bankruptcy statutes or seeks or consents to the appointment of any trustee, receiver, conservator, or liquidator for any or part of its assets.

(2) Time to Cure. If the Contractor or any subcontractor or independent contractor retained by the Contractor fails to perform its duties in a reasonable and competent manner, the City shall give written notice to the Contractor of the deficiencies and the Contractor shall have thirty (30) days to correct such deficiencies. If the Contractor fails to correct the deficiencies within the thirty (30) days, the City may terminate the agreement by giving the Contractor written notice of termination and the reason for the termination..

X. Responsibilities of Contractor.

(1) Supervision and Duty.

- (a) The Contractor shall:
 - (i) supervise and direct the Work, using Contractor's best skill and attention;
 - (ii) be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement;
 - (iii) give adequate attention to the faithful prosecution and completion of the Work and the Agreement; and,
 - (iv) maintain the presence of a competent superintendent and any necessary assistants at any time Work is performed at the site of the Work in order to supervise and direct the Work.
 - (v) follow-up with Contractor for anything construed as a change order. Any contract amendments will be managed in written form and mutually agreed upon by both Contractor and the City.
 - (vi) follow all written instructions and any safety instructions verbally provided and/or written.
- (b) If Contractor removes any superintendent, the Contractor shall notify the City of Angleton, as soon as practicable, but not later than 24 hours, of removal and provide the name of the new superintendent.
- (c) Contractor shall use all reasonable efforts to maintain the same superintendent as supervisor of the Work during all times of the Agreement.
- (d) Contractor shall promptly replace any superintendent after receiving a written request from City of Angleton for a different superintendent.

(2) Conditions Affecting the Work.

- (a) Contractor has, by careful examination and on provision of complete information from the City, satisfied itself as to:
 - (i) the nature and location of the Work;
 - (ii) the conformation of the ground;
 - (iii) the character, quality and quantity of the materials to be encountered;
 - (iv) the character of equipment and facilities needed preliminary to and during the prosecution of the Work;
 - (v) the general and local conditions;
 - (vi) the location of all easements or rights of way procured by Owner, General Contractor or the City for use in connection with the Work;
 - (vii) Contractor's right to proceed with the Work on any easement or preferred corridor suggested by the Owner, General Contractor, or the City; and,
 - (viii) all other matters which can in any way affect the Work under this Contract.
- (b) Any reasonable failure by the Contractor to perform such inspection or examination will not relieve Contractor from responsibility for successfully performing the Work in accordance with this Agreement.
- (c) City of Angleton assumes no responsibility for any understandings or representations concerning conditions of the Work made by any of its officers or agents, unless such understandings or representations are expressly stated in this Agreement. The parties agree that all understandings and representations are not binding unless specifically incorporated in writing into this Agreement.

(3) Differing Site Conditions.

- (a) Upon discovery of any of the following conditions, Contractor shall promptly and before any of the following conditions are disturbed notify City of Angleton in writing of:
 - (i) subsurface or latent physical conditions at the site of the Work differing materially from those indicated in this Agreement, the Contract Documents, or inspection reports of the site provided to Contractor; and
 - (ii) unknown physical conditions at the site of the Work differing materially from those ordinarily encountered and recognized as inherent in the Work.

- (b) City of Angleton' representative shall promptly investigate any differing conditions discovered by Contractor. If City of Angleton finds that the differing conditions are material and will cause an increase or decrease in the Contractor's cost or the time required to perform the Work, the parties shall approach the Owner or General Contractor regarding an equitable adjustment to this Agreement or, at City of Angleton's option, City of Angleton may elect to terminate this Agreement.
- (c) Contractor may not claim any extra or excess costs and expenses for differing conditions unless it complies with this subsection P (3) prior to incurring the additional cost or expense associated with such differing condition and City of Angleton agrees to such in writing.

Y. Permits, Safety, and Responsibility for Materials.

- (1) Contractor shall, at Contractor's sole expense, be responsible for obtaining all necessary approvals, licenses and permits, and for complying with any applicable federal, state and municipal laws, codes and regulations, in connection with the Work.
- (2) Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, visitors, and the property of others.
- (3) If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall be fully and solely responsible for the jobsite safety of such means methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to City of Angleton and shall not proceed with that portion of the Work without further written instructions from City of Angleton.
- (4) Any person adjudged by City of Angleton to be incompetent, disorderly, unreliable, or otherwise unsatisfactory shall be immediately removed from the Project and shall not be employed again on the Work.
- (5) Contractor shall be responsible for all contracted materials delivered and Work performed until acceptance by City of Angleton.

Z. Insurance.

- (1) Contractor shall name the City as an additional insured for all operations that Contractor performs on City of Angleton's behalf. Contractor shall furnish the City with a certificate(s) of insurance certifying that Contractor has such insurance in force within 10 business days after award of the contract. Attached to each certificate of insurance shall be a copy of the Additional insured Endorsement. Certificate(s) of insurance shall be sent to: Office of the City Secretary - 2021 Fiber Project, City of Angleton, 121 S Velasco St, Angleton, TX 77515. Notice shall be given to the City of Angleton by certified mail thirty (30) days prior to the cancellation or upon any material change in coverage. All such insurance shall not be cancelable without thirty (30) days prior written notices being given to the City. The failure to provide certificates of insurance before beginning work and the failure to maintain the required coverage and valid certificates of Insurance evidencing such coverage while the work is in progress shall be cause for termination of this contract by the City.

The Contractor shall require the same insurance that it is required to carry by the City to be carried by any subcontractors and independent contractors hired by the Contractor and to obtain and furnish to the City Certificates of such Insurance before subcontractors and independent contractors are permitted to begin work. All contractors and subcontractors are required to be registered with the City through the Development Services Permitting Department.

(2) During the term of this agreement, Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

(a) Commercial General Liability (CGL) with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.

(i) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

(ii) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a similar form providing substantially equivalent coverage and shall cover liability arising from premises, operations, Contractors, products, completed operations, and personal advertising injury.

(iii) If Contractor is handling fiber optic cable, Contractor agrees to have the “care custody and control” exclusion removed from its general liability insurance policy and to furnish City of Angleton satisfactory evidence that said exclusion has been removed.

(iv) General Contractor, City of Angleton and all other parties required of the General Contractor, shall be included as insured on the CGL, using ISO. Additional insured Endorsement CG 20 10 (11 85) or CG 20 33 (10 01) AND CG 20 37 (10 01) or an endorsement proving substantially equivalent coverage to the additional insureds. This insurance for the additional insured’s shall be as broad as the coverage provided for the named insured Contractor. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

(v) Contractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the work.

(c) Automotive Liability

(i) Business Auto Liability with limits of at least \$1,000,000 each accident.

(ii) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

(d) Commercial Umbrella

(i) Umbrella limits must be at least \$2,000,000.

- (ii) Umbrella coverage must include as insureds all entities that are additional insured on the CGL.
 - (iii) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Contractor.
- (e) Workers Compensation and Employers Liability
- (i) Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.
 - (ii) Where applicable, U.S. Longshore and Harbor workers Compensation Act Endorsement shall be attached to the policy.
 - (iii) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- (f) Payment and Performance Bond
- (i) Contractor may need to provide a payment/performance bond based on project requirements as determined by City of Angleton in its sole discretion or as required by Contract Documents. If so, Muraca Fiber & Telecommunications will be able to invoice City of Angleton for the cost of the bond without markup. If required, failure to obtain a payment/performance bond shall be considered a material breach of this agreement. If a bond is required, the requirements will be outlined in the work order.

(3) Waiver of Subrogation

- (a) Contractor and all subcontractors and independent contractors and their insurers waive all rights of subrogation against the City and its officers, agents, servants and employees for losses arising from work performed by each on this contract. A copy of waiver shall be filed with the City before the Contractor and any subcontractor or independent contractor begins work. Contractor and all subcontractors and independent contractors and their insurers waive all rights for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employer's liability insurance maintained per requirement stated above.
- (b) Attached to each certificate of insurance shall be a copy of the Additional insured Endorsement that is part of the Contractor's Commercial General Liability Policy, Automobile Liability, and Workers Compensation

- (4) Contractor agrees to notify his insurance carrier promptly of any and all actual and potential claims arising out of his work under this agreement.

AA. Economic Loss Rule Waiver. The Contractor agrees, acknowledges, and represents that he/she/it are knowingly and expressly waiving the applicability of the legal doctrine commonly known as the “Economic Loss” rule with respect to their work under this Agreement. Moreover, the Contractor acknowledges that he/she/it are knowingly and expressly agreeing the “Economic Loss” rule or defense shall not be raised, applied, allowed or otherwise asserted in response to a claim by the City against Contractor for Contractor’s alleged negligence, contribution, or other claim related to Contractor’s alleged breach of the standard of care applicable to a Contractor. Furthermore, Contractor expressly agrees that he/she/it shall be subject to liability and damages for their own negligence and that of their principals, agents and other representatives regardless of the fact that Contractor’s work is the subject of this Agreement.

BB. INDEMNITY

(1) For the purposes of this Paragraph BB:

- (a) **“Indemnified Parties” means the City its officers, agents, representatives, employees, volunteers, successors and assigns;**
- (b) **“Liability” means any claims, suits, liabilities, demands, damages, losses, injuries, causes of action, liens, foreclosures, judgments, awards, attorney’s fees, costs, expenses of suit including expert fees in defending or settling a claimed liability, attorney’s fees to enforce or collect on this indemnity, and any other expenses of any kind or character. Liability also includes any government imposed fine, penalty, administrative action, or other action; and**
- (c) **“Contractor” means Contractor, its agents, employees, material suppliers, and Contractors of any tier, and any other person directly or indirectly employed or paid for by them for whose acts they may be responsible.**

(2) IDEMNITY.

(A) CONTRACTOR SHALL PROTECT, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, JUDGMENTS, COSTS, WORKER’S COMPENSATION PAYMENTS, LITIGATION EXPENSES AND COUNSEL FEES ARISING FROM INJURIES TO THE PERSON, INCLUDING DEATH, OR DAMAGE TO PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY:

(I) OFFICIALS, OFFICERS, AGENTS AND/OR EMPLOYEES OF THE CITY OR;

(II) THE CONTRACTOR, HIS SUBCONTRACTORS, ANY INDEPENDENT CONTRACTOR RETAINED BY CONTRACTOR OR MATERIALMEN; OR

(III) ANY OTHER PERSON, WHOSE INJURIES ARE ALLEGED TO HAVE OCCURRED ON OR NEAR THE WORK, OR TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS OR NEGLECT OF THE

CONTRACTOR OR HIS SUBCONTRACTOR, ANY INDEPENDENT CONTRACTOR RETAINED BY CONTRACTOR OR MATERIALMEN BY REASON OF HIS OR THEIR USE OF FAULTY DEFECTIVE OR UNSUITABLE WORK.

THE EXISTENCE OF INSURANCE SHALL IN NO WAY LIMIT THE SCOPE OF THIS INDEMNIFICATION. THE CONTRACTOR FURTHER UNDERTAKES TO REIMBURSE THE CITY FOR DAMAGE TO PROPERTY OF THE CAUSED BY THE CONTRACTOR, OR HIS EMPLOYEES, AGENTS, SUBCONTRACTORS, INDEPENDENT CONTRACTORS RETAINED BY THE CONTRACTOR OR MATERIALMEN OR BY FAULTY, DEFECTIVE OR UNSUITABLE MATERIAL OR EQUIPMENT USED BY HIM OR THEM. CONTRACTOR OR CONTRACTOR'S REPRESENTATIVES, AND CONTRACTOR SHALL DEFEND, AT ITS OWN EXPENSE, ANY PROCEEDINGS BROUGHT AGAINST THE INDEMNIFIED PARTIES AND SHALL PAY ALL EXPENSES INCURRED AND SATISFY ALL JUDGMENTS RENDERED AGAINST THE INDEMNIFIED PARTIES IN CONNECTION WITH OR IN THE COURSE OF OR INCIDENTAL TO, ANY OF CONTRACTOR'S OR CONTRACTOR'S REPRESENTATIVES' WORK OR OPERATIONS UNDER THIS AGREEMENT ("THE "GENERAL INDEMNITY OBLIGATION"). CONTRACTOR SHALL REPORT TO CITY WITHIN THREE (3) DAYS ANY INJURY TO AN EMPLOYEE OR AGENT OF CONTRACTOR WHICH OCCURRED AT THE SITE AS WELL AS ANY OTHER CLAIMS, DAMAGES, OR LOSSES. CONTRACTOR'S INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR CONTRACTOR'S REPRESENTATIVES UNDER ANY LIABILITY IMPOSED BY LAW, INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS AND OTHER EMPLOYEE BENEFIT ACTS.

(B) WITHOUT LIMITING THE GENERAL INDEMNITY OBLIGATION, AND NOTWITHSTANDING ANY OTHER SECTION IN THIS PARAGRAPH, CONTRACTOR SHALL, IN ADDITION, HAVE THE SPECIFIC OBLIGATION TO INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS THE INDEMNIFIED PARTIES AGAINST LIABILITY OR ALLEGED LIABILITY:

(I) FOR FAILING TO PAY PROMPTLY, WHEN DUE, FOR ALL LABOR, SERVICES, MATERIAL, EXPENSES, ITEMS FURNISHED OR FABRICATED, EQUIPMENT, AND SUPPLIES USED IN CONNECTION WITH THE WORK OR OPERATION INCURRED AS PART OF THIS AGREEMENT; AND

(II) FOR FAILING TO COMPLY WITH THIS AGREEMENT IN ANY OTHER WAY PROVIDED THAT ANY RESULTING LIABILITY WHICH, IF ESTABLISHED, COULD CREATE A LIABILITY TO ANY INDEMNIFIED PARTY OR RESULT IN A LIEN ON THE PROPERTY ON WHICH THE PROJECT OR ANY OTHER PROJECT OF CITY OF ANGLETON IS LOCATED.

(III) MADE AGAINST THE INDEMNIFIED PARTIES BY OR IN THE NAME OF ANY EMPLOYEE OF CONTRACTOR OR CONTRACTOR'S REPRESENTATIVES FOR BODILY INJURY OR DEATH OF THE EMPLOYEE TO INCLUDE ANY LIABILITY OR ALLEGED LIABILITY CAUSED, IN WHOLE OR PART, BY THE EXPRESS NEGLIGENCE OF THE INDEMNIFIED PARTIES.

(C) THE CITY MAY RETAIN OUT OF ANY PAYMENT OTHERWISE DUE CONTRACTOR SUFFICIENT FUNDS AS MUTUALLY AGREED TO PROTECT AND INDEMNIFY INDEMNIFIED PARTIES OR THE PROPERTY.

(D) CONTRACTOR SHALL PROMPTLY SATISFY, DISCHARGE OR OTHERWISE REMOVE ANY LIABILITY OR ALLEGED LIABILITY BY PROMPTLY EXECUTING A BOND IF NECESSARY. IF CONTRACTOR HAS BEEN PAID IN FULL, CONTRACTOR OR ITS SURETY SHALL PROMPTLY PAY THE INDEMNIFIED PARTIES ALL COSTS AND EXPENSES INCURRED BY THE INDEMNIFIED PARTIES IN REMOVING OR DISCHARGING SUCH LIABILITY OR ALLEGED LIABILITY. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE CITY MAY, AT ITS OPTION:

(I) PAY AMOUNTS AS ARE DUE OR ARE CLAIMED DUE BY ANY THIRD PARTY WITH RESPECT TO THE PROJECT OR ANY OTHER PROJECT ON WHICH CONTRACTOR HAS BEEN ENGAGED BY CITY OF ANGLETON ; AND

(II) MAY OFFSET FROM THE AMOUNTS DUE CONTRACTOR UNDER THIS OR ANY OTHER CONTRACT OR SUBCONTRACT BETWEEN THE CITY AND CONTRACTOR THE AMOUNT PAID, PLUS ANY ATTORNEY'S FEES INCURRED BY THE CITY IN CONNECTION WITH SUCH CLAIM.

(E) THE GENERAL INDEMNITY OBLIGATION SHALL APPLY REGARDLESS OF CAUSE OR ANY ALLEGATION OF CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF ANY INDEMNIFIED PARTY OR ANY BREACH OF THIS AGREEMENT.

(F) CONTRACTOR ASSUMES ALL RISK OF DAMAGE OR INJURY TO CONTRACTOR'S OWN PROPERTY OR TO THE PROPERTY OF CONTRACTOR'S REPRESENTATIVES FROM ANY CAUSE WHATSOEVER, AND FURTHER AGREES TO FULLY PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS THE INDEMNIFIED PARTIES, FROM AND AGAINST ANY AND ALL LIABILITY OR ALLEGED LIABILITY THAT MAY ARISE FROM DAMAGE OR INJURY TO CONTRACTOR'S OWN PROPERTY OR TO THE PROPERTY OF CONTRACTOR'S REPRESENTATIVES. THIS PROVISION IS INTENDED TO PROTECT, DEFEND, INDEMNIFY AND HOLD AN INDEMNIFIED PARTY HARMLESS FROM LIABILITY OR ALLEGED

LIABILITY CAUSED BY ANY PERSON FOR ANY CAUSE, INCLUDING BUT NOT LIMITED TO THE NEGLIGENCE OF AN INDEMNIFIED PARTY.

(G) THE GENERAL INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR CONTRACTOR'S REPRESENTATIVES UNDER WORKERS' OR WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS, AND SHALL EXTEND TO AND INCLUDE LIABILITY OR ALLEGED LIABILITY BY OR IN THE NAME OF ANY EMPLOYEE OF CONTRACTOR OR CONTRACTOR'S REPRESENTATIVES.

(H) ALL INDEMNITY OBLIGATIONS CONTAINED IN THIS CONTRACT SHALL SURVIVE THE COMPLETION OR TERMINATION OF THIS CONTRACT.

(I) THE INDEMNIFIED PARTIES SHALL BE ENTITLED TO CONTROL THE DEFENSE OF ANY LIABILITY AND SHALL HAVE THE EXCLUSIVE RIGHT TO CHOOSE THEIR OWN COUNSEL FOR THIS PURPOSE.

(J) Reformation under certain circumstances.

In the event that chapter 151 of the Texas Insurance Code, currently or as may be amended, is deemed or adjudicated by a court to be applicable to this agreement, the indemnity provisions under this agreement shall be reformed to comply with applicable law. Under no circumstance shall the applicability of chapter 151 of the Texas Insurance Code void, invalidate, or otherwise act as a complete bar or defense to the indemnities created under this agreement. If chapter 151 of the Texas Insurance Code applies to this agreement, contractor's obligation to indemnify, hold harmless, and defend the indemnified parties shall be reformed so that the indemnity obligations apply only to the extent that the liability or alleged liability is caused in whole or in part by a negligent act or omission or fault of contractor or contractor's representatives

CC. Confidentiality. Contractor agrees that it will be furnished certain information which is either nonpublic, confidential, or proprietary in nature. Such Information will be kept confidential and shall not, without our prior written consent from the City, unless otherwise required by law or court order, be disclosed or used by Contractor or its agents, representatives or employees, in any manner whatsoever, in whole or in part other than in connection with your Work. Moreover, Contractor agrees to reveal the Information only to its agents or representatives who need to know the Information for the purpose of evaluating the Work, who are informed by Contractor of the confidential nature of the Information and who shall agree to act in accordance with the terms and conditions of this Agreement. Contractor shall be responsible for any breach of this Agreement by its agents or representatives.

DD. Non-Competition. Contractor agrees that at no time during the term of this agreement, or for a period of one year immediately following the termination of this agreement, on behalf of itself or

on behalf of any person or corporation other than the City, engage in or solicit business with any customer of the City that is not also a customer of Contractor at the execution of this agreement. As it applies to this section, a customer is one that the Contractor has done work for, bid with in the past, and/or has an open bid to at the time this contract is executed. If an issue arises the submittal date of a bid will be used.

EE. Non-Solicitation. Contractor will not, directly or indirectly, solicit or attempt to solicit any employee or customer of the City to work for or contract with Contractor during the term of this Agreement and for a period of 1 year thereafter from substantial completion of this Agreement.

(1) If a customer solicits work to Contractor City of Angleton expects:

- (A) Contractor to notify City of Angleton
- (B) Contractor explains to customer soliciting work that they will pass the
- (C) information onto City of Angleton of the additional work

FF. Liens.

(1) Contractor shall promptly pay when due all its project creditors, together with the project creditors of all those below it in the contractual chain. If the General Contract involves private work, the Contractor shall further keep the property and improvements of the Project free and clear of all mechanic's and materialmen lien claims, mineral lien claims, and similar bond claims arising out of Contractor's Work hereunder. In the event any such lien or claim is filed or otherwise asserted, Contractor shall promptly secure its release either by payment, procurement of a bond, or by any other means permitted by law. If not so released, the City may retain an amount equal to 100% of the lien or claim and may pay the claimant and offset that amount, plus any legal fees from the amount so retained. If the General Contract involves public work, the Contractor shall promptly pay and secure releases from all of its project creditors, including all those below it in the contractual chain, who are entitled to assert claims against City of Angleton or its surety on the General Contract bonds.

(2) If any claim or lien is made or filed with or against the City the Premises or the Project funds by any person claiming that the Contractor or subcontractors or independent contractors or other person under subcontract to the Contractor, or any person or entity employed or engaged by the Contractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other obligations furnished or incurred in connection with the Work, or if the Contractor or any Contractor or other person under subcontract to the Contractor, or any person or entity employed or engaged by the Contractor at any tier causes damage to the Work or any other work on the project, or if the Contractor fails to perform or is otherwise in default of any term or provision of this Subcontract, the City shall have the right to retain from any payment then due or thereafter due an amount which the City deems sufficient, in its sole discretion, to (1) satisfy, discharge and/or defend against any such claim or lien, (2) make good any such nonpayment, failure, damage or default.

(3) **INDEMNITY. ALONG WITH THE INDEMNITY OBLIGATIONS CONTAINED IN PARAGRAPH BB , IF A LIEN CLAIM IS MADE AGAINST, OR A LIEN IS FILED ON THE PROPERTY AND IMPROVEMENTS OF THE PROJECT, CONTRACTOR**

AGREES THAT IT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY ITS OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES, , AGAINST ANY AND ALL LOSSES, DAMAGES AND COSTS, INCLUDING LEGAL FEES AND EXPENSES, INCURRED BY EITHER OR ALL OF THEM RELATED, DIRECTLY, TO THE LIEN. THE CITY SHALL REQUIRE PROOF THAT ANY SUCH CLAIM OR LIEN IS FULLY SATISFIED, DISMISSED AND DISCHARGED BEFORE ANY REMAINING RETAINED FUNDS WILL BE RELEASED. THE CITY SHALL, IN ADDITION, HAVE THE RIGHT TO APPLY AND CHARGE AGAINST THE CONTRACTOR SO MUCH OF THE AMOUNT RETAINED AS MAY BE REQUIRED FOR THE FOREGOING PURPOSES AND THE CONTRACTOR SHALL PAY AND REIMBURSE THE CITY ALL SUCH LOSSES, DAMAGES, AND COSTS INCURRED BY THEM WHICH EXCEED THE RETAINED FUNDS.

- GG. Guarantee/Warranty. For a period of twelve (12) months, the Contractor guarantees and warrants that the Work complies with this Agreement and the Contract Documents and is free from defects in material and workmanship. The Contractor shall remain liable for defects in the Work for the same period the City remains liable to any other party under the Contract Documents, or as required by law, whichever is greater. Contractor shall promptly repair and make good, without cost to the City, any Work that does not comply with this guarantee/warranty and shall include, but is not limited to, the cost of all labor, material and related items necessary to correct any such defect, plus the cost of repairing any damage to other items which may have been caused by the defective material or workmanship. If the Contractor fails to begin warranty work within seven (7) days of being notified that such work is necessary, the City may, at its option, perform the necessary remedial work or secure its performance by others and charge the Contractor with the cost thereof. Nothing in this paragraph shall shorten the statute of limitations on any action by the City for breach of contract, negligence, or other cause of action against the Contractor its subcontractors or independent contractors. This warranty is in addition to and does not operate as a waiver of any rights or remedies available to the City at law or in equity.
- HH. Clean Up. All clean up and repairs to the Work shall be commenced within one week or sooner after notification by the City. If Contractor fails or refuses to make repairs or perform cleanup within a reasonable time after notification, the City reserves the right to and is authorized to perform said repairs or cleanup for Contractor and charge Contractor therefor.

II. General Provisions.

- (1) Successors & Assigns. All provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City. =Contractor may not assign or subcontract this Contract, nor assign any monies due or that will become due, without the City's prior written consent. The City, however, may assign this Agreement in its sole discretion. No provision of this Agreement shall inure to the benefit of any third party who is neither an assignee nor a successor of the City.
- (2) Non-waiver of Default. Any delay, waiver, or non-enforcement of any provision or right under this Agreement will not be deemed to be a waiver of said provision or right, or any other or subsequent breach hereof.

- (3) Severability. Should any provision of this Agreement be held unlawful or unenforceable, it shall not invalidate the whole of this Agreement, but rather, the Agreement shall be construed as if it did not contain the provision held unlawful or unenforceable, and the rights and obligations of the parties shall be construed and enforced accordingly. If it is judicially determined that any provision of this Agreement is unlawful or unenforceable, the Parties agree that the court may modify this Agreement to the extent necessary to give effect to the intent of the Parties expressed in this document. The Parties agree that this Agreement is to be enforced to the fullest extent permitted by law.
- (4) Entire Agreement. This Agreement represents the entire agreement between the City and Contractor and no oral representations not contained in this Agreement shall be binding on the parties.
- (5) Contractor agrees to abide by any Drug and Alcohol Policy into effect by the City.
- (6) Contractor agrees, covenants, and warrants that he will not pay any money or give anything of value to any supervisor, employee, or customer of the City of Angleton, this includes entertainment. Contractor understands that if it is determined that he has made payments of money or gifts in violation of this provision his contract will be terminated, and he will be prosecuted criminally to full extent of the law
- (7) Governing Law. This Agreement and all contracts hereunder shall be governed and interpreted under the laws of the State of Texas. All judicial, administrative, or regulatory proceedings to enforce the terms of the contract shall be filed in a State or Federal Court of competent jurisdiction located within Brazoria County.
- (8) Counterparts. This Agreement may be executed in a number of identical counter-parts, each of which shall be deemed an original for all purposes and facsimile or copies of this Agreement and the signatures hereto will be deemed an original for all purposes.
- (9) **Required Verifications.**
 - (a) **Nondiscrimination against firearm and ammunition industries.** Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.
 - (b) **Anti-Boycott of Energy Companies.** Contractor verifies that it does not boycott energy companies and will not boycott energy companies during the term of this contract, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session.
 - (c) **Anti-Boycott of Israel.** Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract, as those terms are defined by Chapter 2271, Texas Government Code, as enacted by H.B. 4170, 86th Legislature, Regular Session.

(d) **Foreign Terrorist Organizations.** Contractor verifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as those terms are defined by Chapter 2252, Texas Government Code, as enacted by S.B.252, 85th Legislature, Regular Session.

(e) **Contractor Certification Regarding COVID-19 Vaccination.** Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business during the term of this contract and will not require such documentation during the term of this contract, as those terms are defined by Section 161.0085, Texas Health and Safety Code, as enacted by S.B. 968, 87th Legislature, Regular Session.

- (10) The signatories warrant and represent that they have requisite authority to bind their respective entities to this agreement.

[This space intentionally left blank; Signature Page to follow]

Executed on this ___ day of _____ at _____ Angleton, Texas.

City of Angleton

Muraca Fiber & Telecommunications



BY: _____

BY: _____

TITLE: Chris Whittaker, City Manager

TITLE: President

DATE: _____

DATE: _____