

AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING CONSULTING SERVICES

THIS AGREEMENT is made and entered into this 10thday of September 2021, by and between **UTILITY CONSULTANTS OF FLORIDA**, having its principal place of business at 14800 Walsingham Road, Suite 102, Largo, Florida 33774, hereinafter called "CONSULTANT"; and **THE CITY OF GULF BREEZE FLORIDA**, address at 1070 Shoreline Drive, Gulf Breeze, Florida, 32561 hereinafter called the "CITY". The CITY and the CONSULTANT individually and collectively referred to hereinafter as the "Party" or "Parties".

WHEREAS, CITY wishes to obtain professional engineering consulting services for projects related to UTILITY UNDERGROUND CONVERSION PROJECT MANAGEMENT ("Work"), and

WHEREAS, the CITY desires that the CONSULTANT be available to undertake the Work;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, CITY and CONSULTANT agree as follows:

SECTION 1 - SERVICES OF CONSULTANT

- (a) CONSULTANT shall provide the services as listed in Attachment 'A; - Scope of Services.
- (b) CONSULTANT is retained as an independent contractor and not as an employee of the CITY.

SECTION 2 - PERIOD OF SERVICE

- (a) The provisions of this Section 2 and the various rates of compensation for CONSULTANT's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the services through completion.
- (b) This Agreement shall cover the period from October 1, 2021 through September 30, 2026 ("Term") or as the Parties mutually agree to extend or shorten the Term.
- (c) If, through no fault of CONSULTANT, such periods of time or dates are changed, or the orderly and continuous progress of CONSULTANT's Services is impaired, or CONSULTANT's Services are delayed or suspended then the time for completion shall be adjusted equitably.

### SECTION 3 - PAYMENTS TO CONSULTANT

- (a) The fee for each Work project under this Agreement will be negotiated when assigned to CONSULTANT. The fee is subject to approval by CITY's Council prior to authorization to proceed.
- (b) Fees for meetings, site visits and miscellaneous tasks where the cost is under \$5,000.00 will be performed at the hourly rates set forth in Attachment 'A'. Hourly rates listed in Attachment 'A' may be increased by the Consumer Price Index for All Urban Consumers (CPI) annually on October 1st of each year.
- (c) CITY shall pay the CONSULTANT upon receipt of invoice for work completed in accordance with the Florida Prompt Payment Act.
- (d) All procurement and payments shall be made in accordance with the CITY's Procurement Code, set forth in Article IX of the CITY's Code of Ordinances, and with the ***CITY of Gulf Breeze Purchasing Policies & Procedures***, approved by Resolution Number 58-2019 or the most current version approved by resolution of the CITY Council.
- (e) Prohibition Against Contingent Fees – In accordance with 287.055(6), Florida Statutes, CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

### SECTION 4 - GENERAL PROVISIONS

- (a) Termination - Either the CITY or the CONSULTANT may terminate this Agreement without cause upon ten (10) days written notice to the other Party.
- (b) Plans – All plans and documents prepared pursuant to this Agreement shall become the property of the CITY upon payment for all the Work.
- (c) Governing Law and Venue - This Agreement shall be governed by and subject to the laws of the State of Florida; and venue shall be exclusively in the state courts of the Santa Rosa County, Florida.
- (d) Successors and Assigns - Neither CITY nor CONSULTANT shall assign this Agreement without the express written consent of the other. Nothing contained in this subsection (d) shall prevent CONSULTANT from employing such independent consultants, associates, and subcontractors as it may deem appropriate to assist him in the performance of the Work hereunder.

(e) Public Records

All Contractors providing services to the CITY of Gulf Breeze shall comply with Florida's public records laws, Chapter 119, Florida Statutes, and satisfy the Contractor's duties thereunder as follows:

Keep and maintain public records required by the CITY and/or related to performance of the service.

Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONSULTANT or keep and maintain public records required by the CITY and/or related to performance of the service. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CITY OF GULF BREEZE, (850) 934-5115, LESLIE GUYER, LGUYER@GULFBREEZEFL.GOV, 1070 SHORELINE DRIVE, GULF BREEZE, FL 32561.**

Failure of the CONSULTANT to comply with requests for public records in accordance with the following procedures shall be deemed noncompliance:

A request to inspect or copy public records relating to a CITY contract for services must be made directly to the CITY. If the CITY does not possess the requested records, the CITY shall immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the records to the CITY or allow the records to be inspected or copied within a reasonable time.

If a CONSULTANT does not comply with the CITY's request for records, the CITY shall enforce these contract provisions in accordance with the contract.

A CONSULTANT who fails to provide the public records to the CITY within a reasonable time may be subject to penalties under s. 119.10.

(f) Entire Agreement - This instrument constitutes the entire agreement between the CITY and the CONSULTANT on the subject of this Agreement, and, except as provided for herein, all prior or contemporaneous oral or written agreements or representations of any nature with reference to the subject matter of this Agreement are canceled and superseded by the provisions of this Agreement.



(g) Non-Waiver - No provision in this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

(h) Modifications in Writing - No modifications or amendments to this Agreement will be permitted without prior approval of both Parties. Any and all modifications or amendments must be in writing and executed by both parties.

(i) Waiver of Jury Trial - Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise and the events and circumstances relating to the subject matter of this Agreement.

(j) Indemnification – The CONSULTANT for itself, its subcontractors, agents and employees shall indemnify, defend and hold harmless the CITY, its Mayor, its CITY Council Members, employees, and contractors at all times after the date of this Agreement against:

1. Any liability, loss, damage (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, arising out of or relating to, in whole or in part, directly or indirectly, to Consultant's acts or omissions (including, but not limited to CONSULTANT's negligence) under this Agreement regardless of the location of the act or omission giving rise to the liability, loss, damage (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge and regardless of whether the act or omission giving rise to the liability, loss, damage (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge occurs before or after the date of this Agreement, except such liability, loss, damage (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, arising out of or relating solely to the acts or omissions of the CITY, its Mayor, its City Council Members, employees, and contractors.

2. Any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Agreement, including, without limitation, in each case, attorneys' fees, other professionals' fees, and disbursements, both at trial and on appeal.

3. The CONSULTANT's indemnification obligations set forth in subsection 1. herein shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance or by any bond. The CONSULTANT agrees to pay for and provide a legal defense for the CITY, its Mayor, its CITY Council Members, employees, and contractors, which will be done if and when requested by the CITY to the CONSULTANT in writing.

(k) Litigation Expenses - If any legal action or other proceeding is brought under this Agreement, in addition to any other relief to which the successful or prevailing party or parties ("Prevailing Party") is entitled, the Prevailing Party is entitled to recover, and the non-Prevailing Party shall pay, all reasonable attorneys' fees and all cost of the Prevailing Party both at trial and on appeal.

(l) Notice - Any notices ("Notice") to be sent pursuant to this Agreement shall be to the following designated individuals:

For the CITY:

Samantha D. Abell, CITY Manager  
1070 Shoreline Drive  
Gulf Breeze, FL 32561  
850-934-5100  
sabell@gulfbreezefl.gov

For the CONSULTANT:

Name, Title:	Mark Porter ,Principal-in-Charge/Sr Project Manager
Address:	14800 Walsingham Road, Suite 102 Largo, Florida 33774
Phone:	321-287-8911
Email	utilityconsultantsofflorida@gmail.com

All Notices must be sent via (a) facsimile transmission, (b) via email, and (c) (i) certified U.S. Mail, return receipt requested, or (ii) nationally recognized overnight carrier (such as FedEx or UPS).

(m) Severability - In the event that one or more of the provisions of this Agreement shall for any reason be held to be illegal or unenforceable, this Agreement shall be revised only to the extent necessary to make such remaining provision(s) of the Agreement legal and enforceable.

(n) Default and Enforcement –

- a. The Parties may enforce the performance of this Agreement, in any manner provided by law for a party's failure to abide by any term of Agreement ("Default").
- b. Upon the occurrence of a Default and if the defaulting party has not completely removed or cured the default within thirty (30) days from the date of the non-defaulting party's written notice to the defaulting party of the Default, the non-defaulting party may seek any such relief authorized at law or in equity, including but not limited to termination of Agreement and damages.

(o) Subcontracts and Subcontractors – The CONSULTANT may subcontract the services described in SECTION 1 of this Agreement to other persons or entities. The subcontracts executed by the CONSULTANT in accordance with this sub-SECTION 4. (o) of this Agreement are referred to herein as "Subcontracts" and the subcontractors thereunder may be referred to herein collectively as "Subcontractors." Each Subcontract shall require the Subcontractor to comply with all the terms of this Agreement. The CONSULTANT shall be listed as an additional insured in the Subcontractors' insurance policies (other than workers' compensation policies), and copies of insurance certificates and policies shall be delivered to the CITY upon request. To the extent the Florida Consultant's Competitive Negotiations Act, Section 287.055, Florida Statutes, (CCNA) is applicable to the services of any Subcontractor, CONSULTANT will work with the CITY to ensure compliance with the CCNA before procuring such Subcontractor's services.

#### SECTION 5 - EXHIBITS

The following Exhibits are attached to and made a part of this Agreement:

- Attachment 'A' -Hourly Rate Sheet for Additional Work

#### SECTION 6 - INSURANCE

CONSULTANT shall carry the following insurance during the performance of its services and shall provide certificates of insurance evidencing its coverage, prior to starting the Work. The certificates of insurance shall provide for advance notice to the CITY of any subsequent modification or cancellation of the coverages and shall name the CITY as an additional insured.

- (a) Worker's Compensation Insurance with statutory coverage and \$500,000 employer's liability coverage.
- (b) Commercial General Liability Insurance with aggregate annual limits of \$2,000,000.
- (c) Automobile Liability Insurance with aggregate annual limits of \$1,000,000.
- (d) Professional Liability Insurance with aggregate annual limits of \$2,000,000.



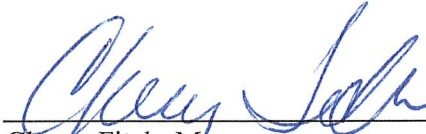
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

**CITY OF GULF BREEZE, FLORIDA**

ATTEST:

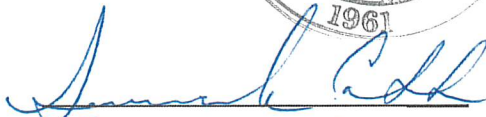
  
\_\_\_\_\_  
Leslie Guyer, CMC, City Clerk

By

  
\_\_\_\_\_  
Cherry Fitch, Mayor




ATTEST:

  
\_\_\_\_\_  
Savannah Cobb  
Printed Name

**UTILITY CONSULTANTS OF FLORIDA**

  
\_\_\_\_\_

By

  
\_\_\_\_\_  
Name:  
Title:

**ATTACHMENT 'A'**  
Utility Underground Conversion Project Manager  
Scope of Services

- A. Provision of information, advice, and technical consulting services to the CITY, and to citizens and groups of citizens regarding the overall PROJECT and specific facilities installations affecting individual properties.
- B. Serve as the CITY'S community liaison representative to address any issues between residents and the utility companies, and between residents and the CITY, and to provide communications regarding the PROJECT to the CITY'S residents as necessary.
- C. Coordinate the acquisition of any additional site and detailed survey data necessary to create conceptual designs, cost estimates, and detail data as necessary to generate final construction designs.
- D. Develop and review conceptual engineering and construction plans and detailed engineering and construction design plans for the undergrounding of overhead utilities facilities within the City, including, but not limited to, streetscape and landscape design, facility & infrastructure designs, easement requirements, PROJECT schedules and phasing, and cost estimates.
- E. Prepare or coordinate the preparation of Route Surveys, which shall include but are not limited to the proper location, monumentation, description or platting of the following routes: roadways, highways and existing utilities and geographical features and electrical needs, easements, ingress and egress easements such as approach routes.
- F. Participate in direct negotiations with Gulf Power (GP), Cox Communications, AT&T, Mediacom, and, to the extent applicable, with other utility providers, with respect to facility design and layout, facility configuration, equipment location and equipment selection, costs, work to be performed by or through each respective utility company, work to be performed by the CITY or through contracts with the CITY and CITY-employed contractors, and schedules.
- G. Facilitate the creation, acquisition, and recording of required easements.
- H. Coordinate services for the acquisition of contract construction resources for work that is to be done as part of the CITY'S responsibility for construction and installation of the new underground facilities pursuant to the PROJECT. This element includes not only coordinating the acquisition of contract construction resources, but also advising the CITY and participating in direct negotiations, on behalf of the CITY, with contractors and subcontractors that may be engaged to perform work that is the CITY'S responsibility under the CITY'S agreements with GP, Cox Communications, Century Link, AT&T, and any other utility providers in connection with the PROJECT.
- I. Prepare reliable and appropriately specified estimates of the cost (including both "hard" and "soft" costs) of implementing a full relocation of the existing overhead UTILITY systems within the City of GULF BREEZE to underground systems. For each phase of the PROJECT, prepare reliable and appropriately specified estimates of the costs to complete each phase. For each phase of the PROJECT, assist CITY Staff and other CITY agents and representatives (e.g., financial advisors, financing advisors, bond counsel, and others) in identifying payment and financing options and



methods, including possible grants for utility undergrounding and streetscape improvements, allocation of costs among UTILITY providers, residents and property owners, and the CITY.

- J. For each phase of the PROJECT, participate in materials procurement activities, including advising the CITY, the UTILITIES, and all contractors and subcontractors as to materials availability, suitability, and decisions; support bidding processes, negotiations, and procurement for materials to the extent necessary, particularly with respect to the procurement of materials performed by or through the CITY, its contractors, and their subcontractors; and maintain satisfactory documents relative to the materials procurement activities.
- K. All design and construction components shall meet, as a minimum, all current Federal, State and CITY codes.
- L. Supervise, monitor, coordinate, facilitate, and inspect all construction activities, including coordinating inspections performed by the UTILITIES or the UTILITIES' contractors, to ensure compliance with contract requirements, to promote the timely and efficient completion of all work to the extent reasonably practicable, and to minimize adverse impacts on the community during the PROJECT construction work.
- M. Maintain satisfactory documents and records, as specified by the CITY, relative to the work performed by the CITY'S contractors and their subcontractors.
- N. Serve as the "CITY'S Representative" for all technical and engineering-related purposes relative to the contracts between the CITY and Gul Power, AT&T, Cox Communication, Mediacom and Uniti Fiber, and, as necessary, other utility providers, and also relative to the contracts between the CITY and its contractors. The Respondent must acknowledge its understanding that this function is the equivalent of serving as the "Owner's Representative" in managing construction contracts and projects.
- O. Track and report to the CITY, on a bi-weekly basis, the progress of all PROJECT activities, including those that are the responsibility of the utility providers as well as those that are the responsibility of the CITY'S contractors and their subcontractors, relative to construction progress, conformance of work completed or in progress to design plans and relevant standards for the particular work involved, compliance with contracts, and compliance with schedules established for various work components of the PROJECT, whether contractually established or not.
- P. Review completed work and associated contractor invoices and advise the CITY as to completed work and the suitability of contractor invoices.
- Q. Maintain PROJECT records, as necessary, in accordance with established professional standards for engineers and in accordance with other established standards specified by the CITY.
- R. Coordinate site restoration activities, including identification of requirements, acquisition of contractor services, and verification of completed work, as necessary.
- S. Provide other services necessary to the execution of the PROJECT as may be required and approved by the CITY.

**ATTACHMENT 'B'**

Utility Underground Conversion Project Manager  
Consultant's Hourly Rate Sheet for Additional Work Outside of Task Orders

LABOR CATEGORY	BILLING RATE
Sr Project Manager	\$ 171
Project Manager	\$ 151
Assistant Project Manager	\$ 128
Scheduler, CPM	\$ 151
Contract Support Specialist	\$ 96
Administrative Assistant	\$ 58
Public Information	\$ 102
Sr Inspector	\$ 113
Inspector	\$ 75
Inspector Aide	\$ 61
QC/QA	\$ 151