

**CONSTRUCTION SERVICES AGREEMENT FOR FIBER INFRASTRUCTURE**

This CONSTRUCTION SERVICES AGREEMENT FOR FIBER INFRASTRUCTURE (the "Agreement") is entered into as of the Effective Date, as defined herein, by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), by and through its fiber utility, Ocala Fiber Network ("OFN"), and the **PARK PLACE OF OCALA HOMEOWNERS' ASSOCIATION, INC.**, a not-for-profit corporation duly registered and authorized to conduct business in the State of Florida (EIN# 59-3111255) ("HOA") (collectively referred to herein as the "Parties").

R E C I T A L S :

WHEREAS, City owns and operates a fiber optic network as part of its utility in and around the City of Ocala consisting of one or more strands of optical fiber; and

WHEREAS, the HOA and its members (the "Park Place of Ocala Residents") desire for City to construct and install new fiber optic infrastructure necessary to provide fiber optic services for purchase and use by the Park Place of Ocala Residents owning property within the community known as Park Place of Ocala; and

WHEREAS, City has estimated the cost of the construction and installation of new fiber optic infrastructure for Park Place Ocala to total **SIX THOUSAND, EIGHT HUNDRED AND NO/100 DOLLARS (\$6,800)**, based on the itemized costs set forth below (collectively the "Construction Fee"):

Description	Quantity	Unit Pricing	Total
Installation of new fiber infrastructure to Park Place of Ocala Subdivision	1	\$3,300.00	\$3,300.00
Placement of electronics and service drops at properties	7	\$500.00	\$3,500.00
TOTAL CONSTRUCTION FEE			\$6,800.00

WHEREAS, City and HOA have agreed that the HOA shall pay a portion of the Construction Fee associated with new fiber optic infrastructure for Park Place of Ocala with the remaining balance of the Construction Fee being recouped by City monthly through Broadband Service Agreements with individual Park Place of Ocala Residents; and

WHEREAS, City agrees to construct the new fiber infrastructure required to provide fiber optic service to the HOA and the Park Place of Ocala Residents subject to the terms and conditions set forth in this Agreement.



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

TERMS OF AGREEMENT:

1. **EFFECTIVE DATE.** This Agreement shall take effect on the last date on which both parties have executed this Agreement.
2. **SCOPE OF WORK TO BE PERFORMED.** City shall construct new fiberoptic infrastructure for Park Place of Ocala, to include labor, materials and equipment required for: (a) the installation of new fiber infrastructure to Park Place of Ocala; and (b) placement of electronics and service drops at properties located within the Park Place of Ocala, in accordance with the Proposal attached hereto as **Exhibit A - Proposal**.
3. **NO POSSESSORY INTEREST.** HOA understands that all rights, title, and interest in the City's fiber optic network and infrastructure shall at all times remain exclusively with City. Any and all equipment, cable, wire, and fiber optic lines provided or installed by City shall remain the property of City. After expiration or termination of this Agreement, City shall have the right and easement to keep applicable portions of the infrastructure on property owned by HOA and/or the Park Place of Ocala Residents and to remove, repair, and mark said portions of the infrastructure; and neither HOA nor the Park Place of Ocala Residents shall require any removal of said portions from such property. Nothing in this Agreement shall be construed to convey any ownership interest, estate, or property interest in any City owned real or personal property.
4. **COMPENSATION.** In exchange for the Work performed by City under this Agreement, HOA and the Park Place of Ocala Residents shall pay to City a total Construction Fee in the amount of **SIX THOUSAND, EIGHT HUNDRED AND NO/100 DOLLARS (\$6,800)** for the installation of new fiber infrastructure to Park Place of Ocala and the placement of electronics and service drops at properties located within Park Place of Ocala in accordance with the following payment terms:
 - A. **Construction Fee Deposit Payable by HOA:** Upon the full execution of this Agreement, City shall invoice HOA in the amount of **ONE THOUSAND, THREE HUNDRED AND NO/100 DOLLARS (\$1,300)** as an initial deposit towards the Construction Fee due under this Agreement ("Initial Deposit"). HOA understands and acknowledges that construction will not begin unless and until the invoice for the Initial Deposit has been paid in full and a minimum of **SEVEN (7)** 36-Month Broadband Service Agreements between City and



Park Place Ocala Residents have been executed. HOA shall have no further financial obligation to City under this Agreement after the Initial Deposit has been paid in full.

- B. **Balance of Construction Fee Payable by Park Place of Ocala Residents:** The Parties understand and agree that the balance of the Construction Fee shall be recouped by City from the combined monthly fees charged by City and paid by Park Place of Ocala Residents pursuant to their 36-Month Broadband Service Agreements with City as follows:
- i. For the first 36-Months of service following the completion of construction for the new fiber infrastructure (or until the balance of the Construction Fee has been paid in full) the combined monthly fees payable by Park Place of Ocala Residents for both shared residential internet service and installment payments shall be **SIXTY DOLLARS PER MONTH PER HOME (\$60/month/home)**. Park Place of Ocala Residents shall remit payment within **THIRTY (30)** days of the date of City's invoice, or City shall have the right to assess a late fee.
5. **ROUTINE MAINTENANCE AND REPAIR OF INFRASTRUCTURE.** Except as expressly set forth herein, HOA and the Park Place of Ocala Residents are prohibited from accessing, directly or indirectly, the fiber optic infrastructure, or any part thereof, or any City-owned electric or other utility. City, either directly or through a third-party vendor, shall perform routine maintenance and repair of infrastructure at City's expense unless said maintenance or repair relates to work necessitated by the negligence or willful misconduct of HOA or the Park Place of Ocala Residents.
6. **PERMITS AND REQUIRED RIGHTS.** City represents and warrants that it has obtained or will obtain and shall maintain all rights, licenses, authorizations, rights of way and other agreements necessary for the use of conduit or cable, as well as any other such rights, licenses, authorizations (including any necessary state, tribal or federal authorizations such as environmental permits), and any other agreements necessary for the use of the fiber optic network by the Park Place of Ocala Residents (collectively referred to as the "Required Rights").
7. **RELOCATION.** Should City determine, by use of reasonable business judgment or as required by law, to relocate any portion of its fiber optic network, City shall proceed with such relocation after providing Customer with reasonable advance notice of its intent to relocate. City reserves the right to negotiate with third parties with respect to any such relocation on behalf of itself, HOA and the Park Place of Ocala Residents and to determine the extent, timing, and methods to be used for such relocation.
8. **USE OF INFRASTRUCTURE.** In its use of the infrastructure, HOA shall not do or permit anything to be done by anyone under its direct control or who may be performing work on



HOA's behalf anything which may in any way obstruct or adversely interfere with City's use or operation of the fiber optic network or which is prohibited by, or will in any way conflict with, any laws now in force or which may hereafter be enacted.

9. **INDEMNIFICATION.** Customer shall indemnify and defend City and its elected officials, employees, volunteers, subcontractors, and consultants from and hold them harmless against any and all damages, claims, demands, losses, causes of action, costs and expenses of every kind and character, including reasonable attorneys' fees, arising out of or in connection with utilization of the infrastructure as contemplated under this Agreement by HOA and the Park Place of Ocala Residents including, without limitation, any harm, damage, or injury to property or third parties caused by or resulting from the acts or omissions of Customer, its employees, contractors, subcontractors, agents, or representatives during the term of this Agreement.
10. **SOVEREIGN IMMUNITY AND LIMITATIONS OF LIABILITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
 - A. City shall not be liable to HOA or the Park Place of Ocala Residents in any manner for any delays and/or lack of completion of construction for reasons beyond the reasonable control of City.
 - B. City shall not be liable to HOA or the Park Place of Ocala Residents for damage caused to the fiber optic network and infrastructure by independent third parties that are engaged in construction or other business operations.
 - C. City shall not be liable to HOA or the Park Place of Ocala Residents for any inability to use the fiber optic network and infrastructure due to an electrical power outage.
11. **ACCESS TO PREMISES.** From time to time, access to the premises owned by HOA and/or the Park Place of Ocala Residents may be necessary in order to facilitate scheduled and non-scheduled installation, maintenance and repair work associated with the fiber optic network and infrastructure. HOA and the Park Place of Ocala Residents agree to cooperate with City, its officers, employees, agents, representatives, and contractors to allow ingress and egress for repairs to the fiber optic network and infrastructure.
12. **NOTICE.** Unless otherwise stated herein, all notices, certifications, or communications required by this Agreement shall be given in writing and delivered by means of certified United States Mail, return receipt requested, or private overnight delivery system, or via



facsimile transmission, provided that a copy of the facsimile is also sent on that same date via United States Mail or private overnight delivery system, addressed as follows:

To HOA: The Park Place of Ocala Homeowners Association
Attention: Mitzi Welch
1621 NE 2nd St, Suite 800
Ocala, FL 34470
Phone: 352-572-8681
E-mail: gatorgirl56@ymail.com

To City: Ocala Fiber Network
Attention: Director
3001 NE 21st St
Ocala, Florida 34470
Phone: (352) 401-6900
Email: telecom@ocalafl.org

with copy to: Robert W. Batsel, Jr.
Gooding & Batsel, PLLC
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-579-6536
E-mail: rbatsel@lawyersocala.com

Notices shall be deemed received on the same day as a facsimile is sent, the day following the date on which the Notice was sent via an overnight mail service, or the date received if sent via United States Postal Service. If Notice is given via two different methods, receipt shall be deemed to have occurred on the earliest possible date.

13. **AUDIT.** HOA shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
14. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy



hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

15. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
16. **DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
 - A. City may, in its sole discretion, provide HOA with an opportunity to cure the violations set forth in City's notice of default to HOA. HOA shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare HOA to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
17. **TERMINATION.** Except as otherwise stated in this Agreement, this Agreement shall immediately terminate and all rights of HOA and/or the Park Place of Ocala Residents to use of the fiber optic network and infrastructure shall cease upon termination of this Agreement. Notwithstanding the foregoing, the termination of this Agreement shall not affect: (a) the rights or obligations of HOA and/or the Park Place of Ocala Residents to make any payment hereunder for services rendered prior to the date of termination or expiration; or (b) any other terms or provisions contained in this Agreement that by their sense and context are intended to survive the expiration or termination of this Agreement.
18. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees

or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

- A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof as soon as it becomes aware.
- B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution.

19. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
20. **ENTIRE AGREEMENT.** This Agreement, including exhibits, constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements, or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
21. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
22. **REFERENCE TO PARTIES.** Any reference herein to the parties individually shall be deemed to include their successors, assigns, administrators, and legal representatives, all who shall be bound by the provisions of this Agreement.
23. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees,



administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

24. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
25. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
26. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
27. **MUTUALITY OF NEGOTIATION.** City and HOA acknowledge that this Agreement is a result of negotiations between HOA and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.



28. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
29. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
30. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
31. **ELECTRONIC SIGNATURE(S).** HOA, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
32. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
33. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.



CONTRACT #OFN/211167

IN WITNESS WHEREOF, the parties have executed this Agreement on 02 / 10 / 2022.

ATTEST:

CITY OF OCALA

Angel B. Jacobs

Angel B. Jacobs
City Clerk

Bill Kauffman

Bill Kauffman
Assistant City Manager

Approved as to form and legality:

THE PARK PLACE OF OCALA HOMEOWNERS
ASSOCIATION, INC.

Robert W. Batsel, Jr.

Robert W. Batsel, Jr.
City Attorney

Mitzi Welch

By: The Park Place of Ocala Homeowners Association
(Printed Name)

Title: President
(Vice-President or higher)

TITLE	FOR SIGNATURES - Construction Services Agreement for Fiber...
FILE NAME	17203.original
DOCUMENT ID	c8d532afce4eb41e4b40aec75bfdef3136ac9324
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	<div> <div></div> Signed </div>

Document History



SENT

02 / 08 / 2022

09:55:15 UTC-5

Sent for signature to Robert W. Batsel, Jr. (rbatsel@lawyersocala.com), The Park Place of Ocala Homeowners Association (gatorgirl56@ymail.com), William Kauffman (wkauffman@ocalafl.org) and Angel Jacobs (ajacobs@ocalafl.org) from biverson@ocalafl.org
IP: 216.255.240.104



VIEWED

02 / 10 / 2022

14:40:13 UTC-5

Viewed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)
IP: 216.255.247.55



SIGNED

02 / 10 / 2022

14:42:01 UTC-5

Signed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)
IP: 216.255.247.55



VIEWED

02 / 10 / 2022

19:41:01 UTC-5

Viewed by The Park Place of Ocala Homeowners Association (gatorgirl56@ymail.com)
IP: 24.250.240.14

TITLE	FOR SIGNATURES - Construction Services Agreement for Fiber...
FILE NAME	17203.original
DOCUMENT ID	c8d532afce4eb41e4b40aec75bfdef3136ac9324
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Signed

Document History



02 / 10 / 2022
19:59:32 UTC-5

Signed by The Park Place of Ocala Homeowners Association
(gatorgirl56@ymail.com)
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02 / 10 / 2022
22:03:36 UTC-5

Viewed by William Kauffman (wkauffman@ocalafl.org)
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02 / 10 / 2022
22:03:46 UTC-5

Signed by William Kauffman (wkauffman@ocalafl.org)
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02 / 11 / 2022
09:53:45 UTC-5

Viewed by Angel Jacobs (ajacobs@ocalafl.org)
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02 / 11 / 2022
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Signed by Angel Jacobs (ajacobs@ocalafl.org)
IP: 216.255.240.104



02 / 11 / 2022
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The document has been completed.