

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 01/23/2024

Contract/Lease Control #: C24-3940-WS

Procurement#: N/A

Contract/Lease Type: AGREEMENT

Award To/Lessee: GIGAPOWER, LLC.

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 01/16/2024

Expiration Date: 01/15/2025

Description of: ADDITIONAL SUBSURFACE UTILITY ENGINEERING SVCS

Department: WS

Department Monitor: HACKETT

Monitor's Telephone #: 850-651-7172

Monitor's FAX # or E-mail: MHACKETT@MYOKALOOSA.COM

Closed: _____

CC: BCC RECORDS

C24-3940-WS

**REIMBURSEMENT AGREEMENT FOR ADDITIONAL
SUBSURFACE UTILITY ENGINEERING SERVICES**

16th January 2024

M Everton
BCC Records

This Agreement is entered into this ~~23~~²³ day of December, 2023, between **Okaloosa County, Florida**, a political subdivision of the State of Florida (the "County") and **Gigapower, LLC**, a Delaware limited liability company ("Fiber Provider").

WHEREAS, Fiber Provider is installing fiber optic cables throughout Okaloosa County as part of a bigger fiber buildout project to expand Fiber Provider's business within the County ("Project"); and

WHEREAS, the Project is at a large geographic scale and unprecedented rapid pace as compared to other utility/construction projects in the area and its related demands on utility locate and repair services; and

WHEREAS, the County has previously contracted with Ardurra Group, Inc. ("Ardurra") to provide subsurface utility engineering services including buried utility locating, verification, identification, marking and protection, and mapping; and

WHEREAS, the County has a responsibility to protect its utilities, maintain service to its customers, eliminate unnecessary water loss, and protect the environment from sewer spills; and

WHEREAS, as a result of the volume and pace of Fiber Provider's Project, there is an increased need, above the County's locating capacity, of subsurface utility engineering services to ensure that County utilities are not damaged in the process; and

WHEREAS, the parties have agreed to share in the cost of additional locate services from Ardurra in order to accommodate the amount of production projected by Fiber Provider; and

WHEREAS, the County or Fiber Provider may engage additional subcontractors to perform subsurface utility engineering services, provided that the County engages Ardurra as the first and primary line locator.

NOW, THEREFORE, it is agreed upon terms by the parties as follows:

1. Damages to Water & Sewer Lines. Due to the nature of Fiber Provider's work, it is possible that damage will occur to water and sewer mains and services. Regardless of fault in these instances, the Fiber Provider agrees to pay \$500 for each typical incident. The County will invoice Fiber Provider separately for non-typical incidents. OCWS will investigate to make a final determination of cost if any of the following apply:

- a) If a precautionary boil water notice was issued to the public.
- b) If a sanitary sewer overflow occurred.
- c) When the total damage to water & sewer facilities is \$5,000 or more.
- d) Damage involving third parties, significant unforeseeable circumstances, or Acts of God.

2. Standard Locate Request Services. County will continue to pay Ardurra for line locating services at established contract prices for all Okaloosa County Water & Sewer (OCWS) line locates throughout the

County's service areas. The County will invoice the Fiber Provider for dig tickets monthly, and Fiber Provider shall pay such invoice within thirty (30) days. Invoices shall be based on the following:

- a) The County will respond to 150 dig tickets per month at no charge to Fiber Provider.
- b) Additional tickets above 150 tickets will be billed at 90% of the current Ardurra contract rate (\$89 per dig ticket) at the time of the ticket (supporting documents available upon request).

3. Enhanced Televised Line Locating Services. If the parties mutually agree that enhanced televised line locating services are necessary, the County will issue a Notice to Proceed to Ardurra for these enhanced televised services (via an established contract). Prior to issuance of the Notice to Proceed, the County will provide the price to Fiber Provider via email from the OCWS Director (or designee) for confirmation and acceptance. The County will invoice the Fiber Provider for 50% of each Ardurra invoice, and Fiber Provider shall pay such invoice within thirty (30) days.

4. Scheduling & Work Activity. For planning purposes, the Fiber Provider shall provide an advanced 2-week schedule to the County and Ardurra on a weekly basis. The schedule will be based on an expected capacity limit of 3,000 linear feet (LF) per day of line locates. The County and Ardurra will provide line locating services for the initial week of this schedule. The second week is for planning purposes.

If the Fiber Provider does not conform to the initial week's schedule, the Fiber Provider may not receive line locating services as requested. Following verification of water and sewer line locates (in accordance with Sunshine State One Call requirements), fiber shall be installed with at least 2.5' of horizontal separation from water & sewer mains.

The expected capacity limit is subject to change based on County commitments and other factors, including, but not limited to: legal requirements, staffing constraints, and volume of construction activity throughout the County. Should the expected capacity limit need to change, Fiber Provider will be notified by the OCWS Director (or designee) in writing via email.

In an effort to minimize impacts to the County customer base and Fiber Provider's progress, Fiber Provider agrees to complete boring operations promptly at 3:30 pm each weekday. Boring operations are prohibited on weekends and holidays. Any exception to this schedule shall be evaluated on a case-by-case basis. Subsequent requests from the Fiber Provider and approvals from the OCWS Director (or designee) shall be in writing via email.

OCWS has five water and sewer service areas spread across the County. OCWS cannot reasonably support multiple Fiber Providers installing projects in more than two service areas simultaneously. The Fiber Provider is authorized to work in both primary County Service areas of Fort Walton Beach (FWB) and Crestview (Excluding Cities of FWB and Crestview) concurrently.

Additional work in the secondary County Service Areas (Mary Esther/Florosa, Blue Water Bay, and Okaloosa Island) will be allowed on a case-by-case basis and will require approval from the OCWS Director (or designee) in writing via email.

Advanced locating in the Secondary Service areas will be dependent on the Fiber Provider diligently coordinating this work with the County. Failure by the Fiber Provider to sufficiently coordinate with the County will result in diminished Advance locating output.

5. Termination. This agreement may be terminated by the County or Fiber Provider, without cause or for convenience, with thirty (30) calendar days' written notice. Furthermore, this agreement may be terminated with written notice for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within five (5) calendar days of written notice and diligently completes the correction thereafter.

6. Indemnification and Hold Harmless. The County will allow permitted right-of-way access for fiber infrastructure. Fiber Provider shall indemnify and hold harmless the County, its officers and employees from liabilities, damages, losses (including loss of Fiber Provider service), and costs including but not limited to reasonable attorney fees, arising out of this agreement to the extent they are a result of Fiber Provider's and or Fiber Provider's Contractors/Subcontractors negligent or intentional acts or omissions.

7. Disputes. Any dispute arising under this agreement which is not settled by agreement of the parties may be settled by mediation or other appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this agreement, the parties shall proceed diligently with the performance of this agreement. This agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this agreement shall be in the Circuit Court of Okaloosa County.

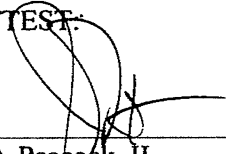
8. Claims. For damage claims to County Infrastructure prior to this agreement, the Fiber Provider does agree to negotiate in good faith with the County to resolve any damage claims incurred prior to the commencement of this agreement.

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

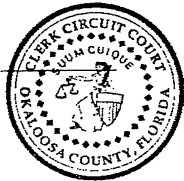
OKALOOSA COUNTY, FLORIDA



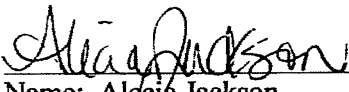
Paul Nixon
Chairman, Board of County Commissioners

ATTEST:


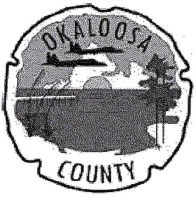
J.D. Peacock, II
Clerk of Circuit Court



Gigapower, LLC



Name: Alecia Jackson
Title: Panhandle Market Lead



Waiting on Leigh Anne
WS - Michael
Hackett
Mori
WRL

**BOARD OF COUNTY COMMISSIONERS
AGENDA REQUEST**

DATE: January 16, 2024
TO: Honorable Chairman and Distinguished Members of the Board
FROM: Michael Hackett
SUBJECT: Okaloosa County-Liveoak Fiber & Giga power Reimbursement Agreements
DEPARTMENT: Water and Sewer
BCC DISTRICT: All

STATEMENT OF ISSUE: Request the Board of County Commissioners consider approving reimbursement agreements from LiveOak Fiber, LLC and Gigapower LLC to Okaloosa County for additional subsurface utility engineering and locating services needed to support their fiber installation activities in Okaloosa County Water and Sewer Service Areas.

BACKGROUND: LiveOak Fiber and Gigapower are each engaged in their own individual large scale fiber installation projects throughout the County. Both fiber providers are currently installing fiber optic cables at an unprecedented volume and pace. This has resulted in an increased need for utility locating services to ensure that County utilities are not damaged.

The County has previously contracted with Ardurra Group, Inc. to provide subsurface utility engineering services for buried utility locating. To accommodate the production projected by both fiber providers, the County has authorized Ardurra to increase line location capacity.

Live Oak and Gigapower have both agreed to reimburse the County for a portion of such additional costs. Ardurra will invoice the County for additional subsurface utility engineering services and the County will then invoice the fiber provider for reimbursement payment.

The agreement also addresses payment for damages to our utilities, general work activities and scheduling to provide for the most effective use of the resources committed to the project and stipulations to reduce the risk of, or minimize, potential damages to our infrastructure.

Both of these agreements have been through the legal review process.

FUNDING SOURCES: N/A -- This will be a source of new revenues that will offset increased location and subsurface utility engineering costs.

OPTIONS: Approve/Deny/Modify/Postpone

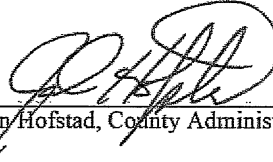
RECOMMENDATIONS: Approval of the Reimbursement Agreements for Additional Subsurface Utility Engineering Services between Okaloosa County-LiveOak Fiber, LLC. and Okaloosa County-Gigapower LLC and authorizing the Chariman to sign both.

Michael Hackett

Michael Hackett, Water & Sewer Director

1/9/2024

RECOMMENDED BY:



John Hofstad, County Administrator

1/10/2024

APPROVED BY: