



Purchasing Office
205 E. 28th Street
Bryan, TX 77803
Office: (979) 209-5501 Fax: (979) 821-5798
btupurchasing@btutilities.com

Date Issued: October 25, 2021

BID# 003-01-22

Purchase & Delivery of OPGW Cable for Atkins to Shady Lane Line Project

**SEALED BIDS TO BE SUBMITTED BY:
2:00 p.m. CST, Tuesday, November 9, 2021**

Disclosure Requirements

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the Bryan Texas Utilities, including affiliations and business and financial relationships such persons may have with BTU officers. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the new law are available at: <http://www.btutilities.com/house-bill-914-conflicts-disclosure/>. If you are unable to obtain such information online, please contact BTU Purchasing at 209-5501 or mail to: BTUPurchasing@btutilities.com for further assistance regarding Chapter 176.

BY DOING BUSINESS OR SEEKING TO DO BUSINESS WITH BRYAN TEXAS UTILITIES, YOU ACKNOWLEDGE THAT YOU HAVE BEEN NOTIFIED OF THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE AND THAT YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH THEM.



Bidder's Name: _____

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NOTICE TO BIDDERS

- **SEALED** bids for **Bid# 003-01-22** will be accepted until **2:00 p.m. CST, Tuesday, November 9, 2021** and publicly opened and read aloud at 2:00 p.m. CST, same date **via videoconference through Zoom** at the link below. Any bids received after 2:00 p.m. CST will not be considered. Sealed bids must be mailed/delivered to 205 E. 28th Street.
- Bid must be completed and submitted on the forms found within the Specifications. Incomplete bid forms will invalidate the bid and the bid will be rejected and returned to the bidder upon request. The right to accept any bid or to reject any or all bids and to waive all formalities is hereby reserved by Bryan Texas Utilities.

Sealed Bids Delivered to:

**BTU Purchasing
Attn: Laura Perez
BID# 003-01-22
205 E. 28th Street
Bryan, Texas 77803**

Join Zoom for Bid Opening (09/09/21 at 2:00 pm. CST)

<https://us02web.zoom.us/j/85313300080?pwd=bGZKWEIRanYvRmNVQ1Btd3h3K3lwZz09>

Meeting ID: 853 1330 0080

Password: **309620**

or dial +1-346-248-7799

*In order to ensure a fair and public bid process, all questions or clarifications related to this Request for Bid shall be addressed in writing, via the **Brazos Valley Online Bidding Ionwave System** (<https://brazosbid.ionwave.net>) prior to 12:00 p.m. CST on November 4, 2021.*

Thanks for Bidding,

Laura Perez, Buyer
BTU Purchasing Department
979-209-5504
lperez@bryantx.gov

OPGW CABLE SPECIFICATION

2021 ATKINS TO SHADY LANE LINE PROJECT

Bryan Texas Utilities (BTU), a municipally-owned utility in Brazos County, Texas, is seeking proposals for purchase of Optical Groundwire (OPGW) cable meeting or exceeding the criteria outlined by these specifications. Proposals not meeting all of the technical and business requirements of the Request for Bid may not be considered.

Design of the pole structures for this project has been conducted utilizing the OPGW physical and electrical characteristics listed in this document. OPGW design proposed shall provide a cable with electrical and mechanical properties that do not create an adverse condition on the design.

Cable shall be manufactured as a minimum to the most recent version of the following standards:

- i. ASTM B415: Hard-Drawn Aluminum-Clad Steel Wire
- ii. ASTM B416: Standard Specification for Concentric-Lay-Stranded Aluminum-Clad Steel Conductors
- iii. ASTM B398: Specification for Aluminum Alloy Wire for Electrical Purposes
- iv. IEEE 1138: Testing and Performance of OPGW for Use on Electric Utility Power Lines
- v. IEEE 738: Calculating the Current-Temperature of Bare Overhead Conductors
- vi. EIA/TIA 598: Fiber optic cable color code

The cable for this project is based on an OPGW design by **AFL Global, AlumaCore DNO-12521**. Cable shall be an OPGW design comprised of Aluminum-Clad Steel (ACS) strands per ASTM B415 and Aluminum Alloy (AY) strands per ASTM B398, and color coded gel-filled loose buffer tubes contained in a central aluminum pipe. OPGW shall contain 144 singlemode fibers. Fibers shall be Corning SMF-28e+, equivalent or better with an attenuation value at 1310 nm not to exceed 0.35 dB per kilometer.

Overall diameter of the complete OPGW cable shall be 0.646 inches (16.4 mm).

Cable shall weigh approximately 0.395 pounds per foot (0.588 kg/m).

Proposals shall include the manufacturer, part number and country of manufacture of fiber and OPGW cable proposed.

If fiber proposed is not Corning SMF-28e+, vendor shall provide with their proposal enough technical information to demonstrate the proposed fiber is equivalent to or better than Corning SME-28e+. Failure to provide the requested technical data may be grounds for disqualifying a proposal.

Cable shall be designed for an ambient operating temperature of -40 degrees Centigrade through +85 degrees Centigrade.

Bidders shall provide with their proposals specification sheets, data sheets or "cut" sheets that describe all of the mechanical and electrical characteristics of the cable proposed. The cable provided shall not vary from the data provided with your proposal. The data requested shall include but not be limited to:

- Overall diameter of the cable
- Composition and location of cable stranding
- Weight per foot of cable
- Rated Breaking Strength
- DC Electrical Resistance at 20 degrees Centigrade
- Composite Modulus of Elasticity
- Coefficient of Thermal Expansion
- Minimum Bending Radius with load and with no load
- Install sheave diameter
- Parameters needed to model this cable in PLS-CADD and Sag 10 Program
- Exact value of other parameters discussed below in this document

Fiber color code shall match industry standard code per EIA/TIA 598. If cable is manufactured with more than 12 fibers per buffer tube – bidder is asked to specify how many fibers will be included in each buffer tube in the Bid Summary (see below) and to describe how these fibers will be marked as bundles.

Bidders shall submit with their proposals cable modeling data for Sag 10 and PLS CADD software programs.

Central member and strength members (if utilized) shall have no preferential bend requirements.

Cable design shall have a Strain Margin Stress (a.k.a. Working Tension) of approximately 60% of RBS design with a Rated Breaking Strength (RBS) of 15,500 pounds (7,000 kgf).

Cable shall have minimum short circuit current capability of 17.6 kA for 0.5 seconds and minimum fault current capability (per IEEE 738) of $166.0 \text{ (kA)}^2\text{sec}$ at 40 degree centigrade ambient initial temperature and 210 degree centigrade final maximum temperature at hottest part of cable.

Spaces between the ACS strands, the AY strands, and central aluminum pipe shall be filled with anticorrosive grease, if available.

Central aluminum pipe shall be hermetically sealed and free from pinholes or leaks. Buffer tubes shall be a gel-filled loose buffer tube construction.

Cable design shall have been type tested per IEEE 1138. Vendors are requested to provide evidence demonstrating satisfactory results of testing per this standard.

All vendor documentation shall include notation of the industry standard that is the basis for the information presented.

After construction of the cable, vendor shall perform an Optical Time Domain Reflectometer (OTDR) and Power Meter test of every fiber to validate the fiber attenuation, length, and physical continuity. Test results must include: date and time of test, name of individual performing test, test equipment used, and individual fiber strand results. Results of test shall be affixed to the reel with an additional copy mailed or e-mailed to: Bryan Texas Utilities, c/o Michael McMillan, 2200 Fountain Avenue, Bryan, TX 77801 or mmcmillan@btutilities.com.

Cable shall be spooled and shipped with length tolerances of –zero feet to +1.0% of length specified. Cable shall be shipped on non-returnable all-steel reels. Vendors shall specify with their proposals the approximate overall dimensions of the reels the cable will be shipped on including diameter of reel, width of reel and diameter of the arbor hole. The reel shall be marked with a metal plate riveted to the reel and stamped with the following information: the overall length of the cable on that reel, the approximate gross weight of the reel and OPGW, the approximate weight of the empty reel, "ATKINS-SHADY LANE PROJECT" and the REEL NUMBER from the table below.

Reel shall be shipped to: BTU Warehouse, 2301 Fountain Avenue, Building 211, Bryan, TX 77801. Warehouse will be responsible for unloading the reels from the delivery company's flatbed trailer at this location. Deliveries will be accepted Monday through Friday (excluding BTU recognized holidays) between 9AM and 3:00PM. Vendor or shipping contractor or delivery driver shall make personal contact with warehouse Brian Gibson 512-799-9389 or Michael McMillan 979-777-8052 a minimum of 48 hours prior to expected delivery date. Shipping or demurrage charges shall be the responsibility of the vendor if 48 hours notice is not provided. The 48 hours of Saturday and Sunday are not included in the vendor required 48 hour notice. Voice mail and text messages are not considered personal contact. All reels must arrive at the same time.

Vendor shall make personal contact with BTU employee Michael McMillan at 979-777-8052 a minimum of 48 hours prior to expected delivery date. This notice is required for BTU to contact third party testing company to test the integrity of the fiber after it arrives. Weekend days and holidays shall not be counted as part of the 48 hour notice. Voice mail and text messages are not considered personal contact.

Cable shall be shipped FOB Destination. Vendor shall maintain responsibility for the integrity of the cable and fiber until fiber integrity has been confirmed after arrival at BTU. BTU or a designated contractor will perform an on-site

on-reel OTDR test of the fiber within 14 days of the arrival of each reel at BTU's designated facility. This on-site test shall be compared to the original factory test results. Any difference in excess of 5% will be reported to the factory immediately. A retest process will be agreed upon by both parties. Reels found to be damaged in transit and identified by the on-site test after delivery shall be replaced by the vendor at no additional cost to BTU. BTU will consider purchasing the damaged reel on a case-by-case basis if a cost reduction can be negotiated. Both ends of the cable shall be capped to prevent moisture ingress. Each reel shall have both cable ends available for testing. Both cable ends shall be secured in place with sufficient cribbage to protect the ends from damage during shipment.

Bidder will be responsible for all transportation costs to BTU's delivery location. Bidder shall be responsible for all import duties/fees, tariffs, etc. if shipped from overseas into the United States. Bidder shall be responsible for all tasks related to U.S. Customs activities if shipped from overseas to the United States. Purchase shall adhere to United States guidelines for doing business with foreign entities.

Bidders shall include in their proposals the number of days expected to deliver the proposed cable after receiving order (ARO) including manufacturing, testing and shipping time.

Bidders shall include in their proposals any special shipping and handling instructions and installation instructions including but not limited to: sheave and/or bullwheel diameters and any installation requirements. Bidders shall indicate any engineering limitations related to reel handling and OPGW stringing operations not previously covered by this specification.

If selected - bidders shall provide invoice(s) with a remittance address based in the United States.

All questions related to this request for proposal shall be submitted to the Question & Answer (Q&A) section of the Brazos Valley Online Bidding System at: <https://brazosbid.ionwave.net/Login.aspx>

BID SUMMARY

2021 ATKINS TO SHADY LANE LINE OPGW PROJECT

Reel 1 8,000 feet OPGW

Reel 2 12,100 feet OPGW

Lump sum price for Reels 1&2 – total footage of 20,100 feet including shipping, tariffs/duties, etc.

\$ _____

Number of fibers per Buffer Tube _____

Bundle marking method for tubes with more than 12 fibers _____

Expected number of days to deliver ARO _____ days

OPGW cable

Mfr _____

P/N _____

Country of Manufacture _____

Manufacturer and type of fiber proposed if not
Corning SMF-28e+

Mfr _____

P/N _____

Reel Information

Reel Number	Width (inches)	Diameter (inches)	Arbor Dia (inches)	Approx Wt (lbs) (reel & cable)
1	_____	_____	_____	_____
2	_____	_____	_____	_____

DEVIATIONS FROM SPECIFICATIONS/GENERAL INSTRUCTIONS

Bidder must itemize all deviations taken to the specifications/general instructions. If there is not sufficient space, attach additional sheets as required. Unless otherwise stated by the bidder in the space provided below and on any additional sheets, the proposal or bid will be considered as being in strict accordance with the specifications/general instructions outlined herein.

Exceptions Taken	Proposed Deviation and Justification

Exhibit “B”
GENERAL INSTRUCTIONS
FOR
BIDDING TO BRYAN TEXAS UTILITIES
REQUEST FOR BIDS-TERMS AND CONDITIONS

Definitions

In order to simplify the language throughout this request for bids, the following definitions shall apply:

BTU – Bryan Texas Utilities

BTU BOARD OR BOARD – The officials appointed to the Bryan Texas Utilities Board who have been given the authority to exercise such powers and jurisdiction of BTU business as conferred by the City of Bryan’s Charter and Code of Ordinances.

CITY – Same as City of Bryan

CONTRACT- An agreement between the City and a Vendor to furnish products over a designated period of time during which repeated purchases are made of the commodities specified.

VENDOR- The successful Bidder(s) of this bid request

RFB- Request for Bids

Instructions

The following instructions apply to all bids and become a part of the terms and conditions of any bid submitted, unless bidder takes exception in writing when submitting bid.

Form

Bids must be submitted on this form only, in single copy, unless otherwise stated. All bids submitted must be itemized with prices extended when practical. **BIDDER MUST RETURN THE ENTIRE ORIGINAL BID DOCUMENT WITH BID OR PROPOSAL.**

Bid Return

To ensure proper recognition upon its arrival, list the Bid Number on envelope/package.

Authorized Signature

Bids must show full firm name and mailing address of bidder and be manually signed by an authorized sales or quotation representative of the bidder. Firm name and authorized signature should appear on each page of bid where spaces are provided. Submission of a signed bid will be interpreted to mean that bidder has hereby agreed to all terms and conditions set forth in all of the sheets which make up this invitation.

Late Bids

Bids must be received at the location indicated in the bidding documents and received prior to the time indicated on this form. Late bids will not be opened and will be returned to the bidder upon written request.

Withdrawal-Alteration of Bids

Bids cannot be altered after receiving time or opening time. No bid may be withdrawn after opening time without acceptable reason in writing and with the approval of Bryan Texas Utilities

Firm Prices

Bid prices must be firm for a minimum of 90 days from the date of bid opening.

Cash Discounts

Bidders may quote additional cash discount terms in the Cash Discount Column. If no discount is shown, prices are to be assumed net. Discount period to be started from the date of completion of entire order or date of receipt of invoice, whichever occurs last regardless of date of invoice.

Taxes

The City of Bryan and BTU are exempt from Federal Excise, State Sales and Transportation Taxes. TAX MUST NOT BE INCLUDED IN BID. Upon request BTU will execute Tax Exemption Certificates. The City of Bryan is statutorily exempt from State and Local Sales tax and a permit number is not required.

Error-Quantity

Bids must be submitted on units of quantity specified. In the event of errors in extended prices, the unit price shall govern. Any suggested quantity to secure better prices is welcomed. When discrepancies occur between words and figures, the words shall govern.

Delivery

Bids must show the number of consecutive calendar days required to deliver the materials, services or equipment under normal conditions. Failure to specify delivery time will be considered reason enough to cause the bid to be disregarded. Delivery time quoted will be given consideration in awarding orders. If delivery is not made within ten (10) days after number of days specified on bid, entire order may be canceled and bidder's name removed from mailing list. On time delivery of all materials and or services specified herein is of essence and will be a consideration in bid award. Should the Successful Bidder neglect, refuse, or fail to complete delivery of the material and or services within the times stated in the bid, then, in that event, BTU shall have the right to obtain material from alternate sources and the original bidder shall be liable for any differences in cost incurred by BTU from the original bid price.

All deliveries are to be made to Bryan Texas Utilities – Electrical Warehouse located at 611 Union Street, unless otherwise specified in the Bid Request or Purchase Order. Deliveries will be accepted only during normal working hours on normal working days. Unless otherwise indicated, items received must be new and in first-class condition. Types of materials normally packaged for protection and convenience in storage shall be in the proper containers.

F.O.B.- Damage

Bids will not be considered unless bid F.O.B. delivered Bryan, Texas. If shipping costs are not included in the unit bid price, bidder must give exact delivery cost, which is to be prepaid or added to the invoice. Bryan Texas Utilities assumes no liability of goods delivered in a damaged or unacceptable condition.

Lump Sum Bids

Lump sum bids will be considered only if unit prices are quoted also. However, the totals of such quoted unit prices and the lump sum bids will not be considered if the price quoted also involves prices of commodities requested on an entirely separate bid request.

All-Or-None Bids

All-or-none bids will be considered only if bidder quoted prices on all items requested. If a bidder desires the City to consider an all-or-none bid, it must be stated on the deviations page. All-or-none bids will not be considered if prices quoted involved prices of items and services requested on an entirely separate bid request.

Best Value

All bidders are hereby notified that BTU shall consider all factors it believes to be relevant in selecting the offer that provides the best value, including, but not limited to the purchase price, the proximity of the bidder as it relates to his ability to perform the contract for BTU, the delivery date, the reputation of the bidder and the bidder's goods or services, the quality of the bidder's goods or services, and the bidder's past performance under contracts with BTU or the City, the bidder's compliance with City ordinances.

No exclusion or particular Vendor or Manufacturer

BTU is committed to obtaining its goods, products and services at the lowest price possible which benefits all the citizens of Bryan. Therefore, in order to accomplish this objective/goal, it is not the intention of BTU neither to exclude particular vendors or manufacturer's. Names, trade names, brand names, catalog numbers, technical data, etc. used in the specifications are there for the sole purpose of establishing and describing general performance, quality levels, type and dimensions and such references are not intended to be restrictive. Alternate bids on similar or comparable products and services of any manufacturer or vendor equal to the products and services described in the specifications are invited and will be given careful consideration provided the alternate product will accomplish the same task. BTU shall be the sole judge on whether the alternate product and service is similar to, equal to and in compliance with that specified. The decision of BTU shall be final.

"In literal compliance" in reference to standards and specifications shall mean meeting or exceeding of all or nearly all of the said standards and specifications. If BTU determines the standards and specifications are in literal compliance where not all standards and specifications have been met or exceeded, BTU must base such a determination on its finding that any standards and specifications which have not been met or exceeded do not render the bidder product any less usable for the purpose for which it is intended.

Right to Reject Bids

Bryan Texas Utilities reserves the right to accept or reject any or all bids, to waive any informalities and technicalities, to accept the offer considered most advantageous **in order to obtain the best value for Bryan Texas Utilities**. Causes for rejection of a bid may include, but shall not be limited to, the bidder's current violation of any City ordinance, the bidder's current inability to satisfactorily perform the work or service, or the bidder's previous failure to properly and timely perform its obligations under a contract with BTU or the City. Bidders may be disqualified and rejection of proposals may be recommended for any (but not limited to) of the following causes: 1) Failure to use the proposal form furnished by BTU; 2) Lack of signature by an authorized representative on the proposal form; 3) Failure to properly complete the proposal; 4) Evidence of collusion among bidders; 5) Omission of uncertified personal or company check as a proposal guarantee **(if Bid Bond required)**; or 6) Unauthorized alteration of bid form. BTU reserves the right to waive any minor informality or irregularity.

Award of Contract

The bid award may be based on, but not necessarily limited to, the following factors:

- a. The purchase price, including payment discount terms;
- b. The reputation of the bidder and of the bidder's goods or services;
- c. The quality of the bidder's goods or services;
- d. The extent to which the goods or services meet BTU's needs;
- e. The bidder's past relationship with BTU;
- f. The total long-term cost to BTU to acquire the bidder's goods or services; and
- g. Any relevant criteria specifically listed in this request for bid.

The City prefers to award the entire contract to a single Contractor; although, the City reserves the right to award multiple contracts to secure the best value for BTU.

Term of Contract

This contract shall become effective from date of acceptance and approval by BTU. It shall remain in full force and effect with firm fixed bid prices for a period of twelve (12) months.

Assignment of Contract

This contract cannot be transferred or assigned to another party without written consent of BTU's Purchasing Agent and may be subject to cancellation if such consent is requested.

Contract Termination

BTU may terminate this Contract at any time upon **thirty (30) calendar** days written notice. Upon the Vendor's receipt of such notice, the Vendor shall cease work immediately. The Vendor shall be compensated for the services satisfactorily performed prior to the termination date.

If, through any cause, the Vendor fails to fulfill its obligations under this Contract, or if the Vendor violates any of the agreements of this Contract, BTU has the right to terminate this Contract by giving the Vendor **five (5) calendar** days written notice. The Vendor will be compensated for the services satisfactorily performed before the termination date. Termination of the contract for cause shall be deemed as sufficient evidence and cause to remove the Vendor's name from the bidder's list for receiving future bids.

No term or provision of this Contract shall be construed to relieve the Vendor of liability to BTU for damages sustained because of any breach of contract by the Vendor. BTU may withhold payments to the Vendor for the purpose of setoff until the exact amount of damages due to BTU from the Vendor is determined and paid.

Payment of Invoices

Invoices must be submitted by the successful bidder in duplicate to Bryan Texas Utilities, Fiscal Services, P.O. Box 1000, Bryan, Texas 77805, (979) 821-5853.

All invoices to be paid in full within thirty (30) days after satisfactory delivery and billing, whichever is the later. BTU will not be liable for payment of invoices received more than sixty (60) days after delivery of order, or completion of services.

Liability

The successful bidder shall be liable for all damages incurred while in the performance of services pursuant to this request.

Material Safety Data Sheets

MSDS's must be provided prior to or with receipt of order, and when revised. Containers must be properly labeled and identified in accordance with the OSHA Hazard Communication Standard. Improperly labeled containers will result in refusal of the shipment and possible change in vendors.

Patents, Franchises, etc.

The successful bidder agrees to indemnify Bryan Texas Utilities from any claim involving patent right infringements, copyrights or sales franchises.

No Bids

If bidder is unable to quote, the bid form should be returned to the purchasing agent before opening time, and reason given for not bidding if bidder desires to bid on future purchases.

Addenda

In the event of a needed change in the published bid documents, it is understood that all the foregoing terms and conditions and all performance requirements will apply to any published addendum.

All published addenda shall be signed and included with the response package as acknowledgement of the addendum. Bidders are responsible for obtaining all published addenda from BTU or by downloading these documents from the BTU website. BTU assumes no responsibility for the Bidders failure to obtain or properly submit any addendum. Failure to acknowledge and submit any addendum may be cause for the bid to be rejected. BTU's decision to accept or reject any particular bid due to a failure to acknowledge and submit addenda shall be final.

Fiscal Funding

BTU operates and is funded on a fiscal year basis; accordingly, BTU reserves the right to terminate, without liability, any contract for which funding is not available. Renewal of contract will be in accordance with Local Government Code 271.903 concerning non-appropriation of funds for multi-

year contracts. BTU reserves the right to rescind the contract at the end of each fiscal year if it is determined that there are insufficient funds to extend the contract.

Court Jurisdiction

BTU and the successful Vendor agree that the contract awarded from this Request for Bid shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in a state court of competent jurisdiction in Brazos County, Texas and further that neither party will seek to remove such litigation to the federal court system by application of conflict of laws or any other removal process to any Federal Court or court not in Texas.

Legislative Acts

Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited; a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153.

Pursuant to Government Code 2270.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

Basic Safeguarding Of Contractor Information Systems

A. The Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

B. Contractor shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

Indemnification

Contractor shall defend, indemnify and save harmless BTU and all its officers, agents, and employees from suits, actions, or claims brought for or on account of any injuries or damages received or sustained by any person or persons or property to the extent caused by the Contractor's negligent performance of the services, or by or on account of claims or amounts recovered under the Worker's Compensation Law or other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished to BTU. Contractor shall defend, indemnify and save harmless BTU, its officers, agents and employees in accordance with this indemnification clause regardless of whether the injury or damage is caused in part by BTU, its officers, agents or employee's, however such indemnification shall extend only to that portion of the damage caused by Contractor's negligence.

Independent Contractor

Contractor acknowledges that Contractor is independent contractor and not an agent or employee of BTU. The Contractor and its employees are not the agents, servants, or employees of BTU. As an independent contractor, the Contractor shall be responsible for the services contemplated under this Contract. Except for materials furnished by BTU, the Contractor shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Contractor shall have ultimate control over the execution of the services. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and BTU shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors.

Certification of Bid

Re: BID# 003-01-22

I, the undersigned, hereby certify and represent that I am duly authorized to submit this bid on behalf of the firm identified herein and that this firm hereby agrees to be bound by and is willing, capable and does qualify to comply with all the provisions specified herein for completion of the services requested at the terms and conditions as quoted.

Representative's Name:

(Please print or type)

Representative's Signature:

Representative's Title:

Date:

Bidding Firm Name and Address:

Phone Number: _____

Fax Number: _____

Email Address: _____



CONTRACT for XXXXXXXXXX

This Contract is between **Awarded Bidder**, (hereby referred to as the Service Provider) and BTU of Bryan, Texas, a home rule municipal corporation which owns and operates a municipal electric utility known as “Bryan Texas Utilities”, hereinafter referred to as “City” or “BTU”, whereby the Contractor agrees to provide BTU with certain services as described herein and BTU agrees to pay the Service Provider for those services.

1. Scope of Services

In consideration of the compensation stated in **paragraph 2**, the Service Provider agrees to provide the BTU with the services as described in Exhibit A, Specifications & Price Sheet BID# XXX-XX-XX, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: **Description of Material Requested**

2. Payment

In consideration of the Service Providers provision of the services in compliance with all terms and conditions of this Contract, BTU shall pay the Service Provider according to the terms set forth in Exhibit B, Bid Forms. Except in the event of a duly authorized change order, approved by BTU in writing, the total cost of all services provided under this Contract may not exceed \$

3. Time of Performance

A. All services provided under this Contract must be completed according to the Scope of Services described in Exhibit A, BID #XXX-XX-XX.

B. **Time is of the essence of this Contract.** The Service Provider shall be prepared to provide the services in the most expedient and efficient manner possible in order to complete the work by the times specified and described in Exhibit A, BID #XXX-XX-XX.

4. Warranty, Indemnification & Release

A. As an experienced and qualified Service Provider, the Service Provider agrees that the services provided by the Service Provider reflect the professional and industry standards, procedures, and performances. The Service Provider agrees the selection and supervision of personnel, and the performance of services under this Contract, will be pursuant to the standard of performance in the profession. The Service Provider agrees that the Service Provider will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of BTU shall not constitute, or be deemed, a release of the responsibility and liability of the Service Provider, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy, competency and quality of the services provided, nor shall BTU's approval be deemed to be the assumption of responsibility by BTU for any defect or error in the aforesaid

services provided by the Service Provider, its employees, associates, agents, or subcontractors.

B. The Service Provider shall promptly correct any defective work furnished by the Service Provider at no cost to BTU. BTU's approval, acceptance, use of, or payment for, all or any part of the services hereunder itself shall in no way alter the Service Providers obligations or BTU's rights hereunder.

C. In all activities or services performed hereunder, the Service Provider is an independent contractor and not an agent or employee of BTU. The Service Provider and its employees are not the agents, servants, or employees of BTU. As an independent contractor, the Service Provider shall be responsible for the services and the final work product contemplated under this Contract. Except for materials furnished by BTU, the Service Provider shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Service Provider shall have ultimate control over the execution of the services. The Service Provider shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and BTU shall have no control of or supervision over the employees of the Service Provider or any of the Service Providers subcontractors.

D. The Service Provider must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that BTU shall not be liable or responsible for the negligence of the Service Provider, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. Responsibility for damage claims (indemnification): Service Provider shall defend, indemnify and save harmless BTU and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Service Provider's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished BTU. Service Provider shall defend, indemnify and save harmless BTU, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Service Provider's negligence.

F. **Release.** The Service Provider releases, relinquishes, and discharges BTU, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Service Provider or its employees and any loss of or damage to any property of the Service Provider or its employees that is caused by or alleged to be caused by, arises out of, or is in

connection with the Service Provider's negligent performance of the work. Both BTU and the Service Provider expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. Termination

A. BTU may terminate this Contract at any time upon **thirty (30)-calendar** days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall cease work immediately. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the Service Provider fails to fulfill its obligations under this Contract, or if the Service Provider violates any of the agreements of this Contract, BTU has the right to terminate this Contract by giving the Service Provider **five (5)** calendar days written notice. The Service Provider will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the Service Provider of liability to BTU for damages sustained by BTU because of any breach of contract by the Service Provider. BTU may withhold payments to the Service Provider for the purpose of setoff until the exact amount of damages due BTU from the Service Provider is determined and paid.

6. Miscellaneous Terms

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following address:

BTU
Attn: Purchasing Dept.
P.O. Box 1000
Bryan, TX 77805

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between BTU and the Service provider and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the Service Provider without the prior written approval of BTU.

F. The Service Provider, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of BTU of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Service Provider must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. The Service Provider shall apply basic safeguarding requirements and procedures to protect the Service Provider's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

H. The Service Provider shall include the substance of subsection 6 (G) above in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

I. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

BRYAN TEXAS UTILITIES:

Gary D. Miller, BTU General Manager

Date: _____

APPROVED AS TO FORM:

Thomas A. Leeper, Interim City Attorney

Date: _____

Service Provider:

By: _____

Printed Name: _____

Title: _____

Date: _____

(Service Provider - Corporate Seal)

STATE OF TEXAS §
 §
COUNTY OF _____ §

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the _____ day of _____, 2021, by

_____ on behalf of

Notary Public in and for
The State of Texas