

**LETTER OF AGREEMENT FOR CUSTOM WORK and ESTIMATE OF
ACTUAL COST GOVERNMENT AGREEMENT**

January 29, 2024

CR#: 217072**Project Number: A02D4E1**

Customer Name: City of Fort Lauderdale
Billing Address: 1300 West Broward Blvd, Fort Lauderdale, FL 33312
Contact Name: Myron Young
Contact email Address: myoung@dfortlauderdale.gov
Contact Phone Number: (954) 828-3548
Site Location: 1300 W. Broward Blvd, Fort Lauderdale, 33312

AT&T has received a request from you to perform the following work:

Revised Invoice: 01.29.2024, Relocate existing conduits into easement. Relocate CRAN Pole and Handhole into easement.

Estimated Actual Cost Quote

Expenses	Amount
ENGINEERING LABOR	\$30,110.41
MATERIAL COST	\$14,442.57
CONSTRUCTION LABOR	\$21,046.15
CONTRACTOR COST	\$84,487.90
MISC.COST	\$0.00
	<hr/>
	Estimated Contract Price \$150,087.03
	<i>Less Credits/Payments</i> \$ 0.00
	Estimated Balance Due \$ 150,087.03

Special construction charges apply. Engineering and Construction will not begin until the attached agreement is signed by you or your authorized agent. This signed agreement must be received at the AT&T address shown below before AT&T will proceed with any work.

This quote is only valid for 60 days from the date of this letter.

Payment in full is required within 30 days after the date of the AT&T invoice for the charges associated with the work performed.

CUSTOM WORK AGREEMENT

CR#: 217072

Project Number: A02D4E1

This Custom Work Agreement ("Agreement") is entered into by and between BellSouth Telecommunications, LLC. d/b/a AT&T Southeast (hereafter "AT&T") and City of Fort Lauderdale (Customer).

AT&T and Customer hereby agree to following terms:

1. **Special Construction.** This Agreement is for the special construction as further described on page 1, attached hereto and incorporated herein by this reference ("Special Construction"). The charges and costs for this work is referenced herein as Special Construction Charges. Payment in full based on actual costs is required within thirty days after AT&T issues an invoice to the Customer for these Special Construction Charges.
2. **Price Quote.** The price is guaranteed for 60 days from March 24, 2024. If the charges are not accepted within 60 days the request will be canceled and a new request will need to be placed. The second estimate may be higher than the price that was originally quoted.
3. **Early Termination.** Should Customer terminate or cancel this Agreement prior to the completion of construction, Customer shall remain liable for the Special Construction Charges. Customer acknowledges and agrees AT&T shall incur substantial up-front costs in connection with its performance under this Agreement and that damages in the event of such early termination or cancellation are not readily ascertainable and that in such event of early termination, payment of the Special Construction Charges is reasonable. Customer further acknowledges and agrees that it hereby waives any right to contest such payment of the Special Construction Charges for any reason, including, but not limited to reasonableness of the charges, quality of the work, or timeliness of the work.
4. **Limitation of Liability.** AT&T's maximum liability arising in, out of or in any way connected to this Agreement in no event shall exceed Special Construction Charges paid by Customer to AT&T.
5. **Changes in Scope of Work.** The Parties recognize that this is an 'Actual Cost' contract. "Actual Cost" means that Customer will be provided with a final bill after the completion of all work and agrees to pay that final bill. The final bill will be calculated based on AT&T's billing practices and work performed, which Customer agrees to accept. Customer understands and agrees that the final bill for the Actual Cost may exceed the preliminary cost estimate that has been provided for this work. Consequently, AT&T is not required to provide the Customer with prior notice that the Actual Cost has exceeded the preliminary cost estimate prior to providing the final bill. Further, if the Customer initiates changes in the scope of the work after AT&T has provided the preliminary cost estimate or after executing this agreement, the above cost estimate and this agreement are null and void. A new cost estimate must be provided based on the new scope of work and a new agreement must be executed by the Parties. Additionally, if the contractor bid exceeds the estimated contractor costs the Customer will be responsible for the additional costs and a change order will be issued for customer approval. Work will not commence until signed change order and additional payment has been received.

6. **Changes Due to Field Conditions.** In the event there exists any conditions in the field that differ from those that existed at the time AT&T provided the quote or from the time the Customer executes the agreement, AT&T shall bill and Customer shall pay any additional cost. Field conditions that may alter the cost associated with this work include, but are not limited to, conditions that exist below the surface of the ground and could not have been anticipated at the time of the price quote, above ground barriers, Acts of God affecting the progress or sequencing of the work, labor disputes and other conditions or circumstances that AT&T could not have reasonably anticipated at the time the cost estimate was provided. Differing field conditions are but one example of why the Actual Cost may exceed the preliminary cost estimate. Further, items that Customer has agreed to provide in connection with the Special Construction work, such as (but not limited to) providing conduit and/or handholes, must be suitable to AT&T's purposes. If these items are not suitable or AT&T is forced to acquire or provide them, it will result in increased costs that Customer agrees to pay.

7. **Customer Obligations.** Customer agrees to provide appropriate easements and/or rights of way, as determined by AT&T, to AT&T for its lines and any facilities necessary for the Special Construction work. Further, Customer agrees to provide and place suitable conduit and handholes for AT&T's use in the Special Construction work. Should Customer not provide these items, Customer understands and agrees that it will result in increased costs above the estimate provided, which Customer agrees to pay.

8. **Time to Complete.** Any representation by AT&T, its contractors, or employees that the Project will be complete by a certain date or certain time period is strictly an estimate and not binding. All estimated completion dates are subject to changing conditions in the field, changes in the scope of the work, relocation of existing utilities not within AT&T's control, Acts of God, weather delays, labor disputes, contractor disputes, pandemics and other conditions or circumstances could not reasonably anticipate at the time of the estimate.

9. Intentionally Deleted

10. **Miscellaneous.**

- A. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.
- B. **Effect of Waiver.** No consent or waiver, express or implied shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition, or duty.
- C. **Headings.** The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- D. **Interpretation.** The Parties agree that this Agreement shall not be interpreted in favor or against either any Party. The Parties further agree that they entered into this Agreement after conferring with legal counsel, or after having a reasonable opportunity to confer with legal counsel.
- E. **Applicable Law.** This Agreement shall be governed and interpreted in accordance with the laws of the state that the work site location is located without regard to that state conflict of law principles.

- F. Attorneys' fees. If either Party materially breaches this Agreement and should the non-breaching party seek to enforce its rights through legal action, the prevailing party shall recover from the other party all costs and expenses incurred, including, but not limited to, reasonable attorneys' fees.
- G. Authority. The signatories to this Agreement represent and warrant that they are duly authorized to execute this Agreement.
- H. No Precedent. Except for the matters resolved and released herein, this Agreement is of no value and shall not be considered precedent for resolving any dispute that may arise in the future.
- I. Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

11. **Final Agreement.** THIS AGREEMENT REPRESENTS THE ENTIRE AND FINAL EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. EXCEPT AS PROVIDED HEREIN, THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES; THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12. **E-Verify.**

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2023), as may be amended or revised, the Contractor and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The Contractor shall require each of its subcontractors, if any, to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.
2. The City, the Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes (2023), as may be amended or revised, shall terminate the Agreement with the person or entity.
3. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Section 448.095(2), Florida Statutes (2023), as may be amended or revised, but that the Contractor otherwise complied with Section 448.095(2), Florida Statutes (2023), as may be amended or revised, shall promptly notify Contractor and order the Contractor to immediately terminate the contract with the subcontractor, and the Contractor shall comply with such order.
4. An Agreement terminated under Sections 448.095(2)(c)1. or 2., Florida Statutes (2023), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes (2023), as may be amended or revised, the Contractor may not be awarded a public contract for at least one year after the date on which the Agreement was terminated. The Contractor is liable for any additional costs incurred by the City as a result of termination of this Agreement.
5. Contractor shall include in each of its subcontracts, if any, the requirements set forth in this Section, including this subparagraph, requiring any and all subcontractors, as defined in

Section 448.095(1)(j), Florida Statutes (2023), as maybe amended or revised, to include all of the requirements of this Section in its subcontracts. Contractor shall be responsible for compliance by any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2023), as maybe amended or revised, with the requirements of Section 448.095, Florida Statutes (2023), as may be amended or revised.

13. **Non-Discrimination.**

The Contractor shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Contractor certifies and represents that the Contractor offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

14. **Prohibition Against Contracting Scrutinized Companies.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2023), as may be amended or revised. The Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), as may be amended or revised, and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2023), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2023), as may be amended or revised.

By submitting a bid or response, the company, principals, or owners certify that it is not listed on the Scrutinized Companies with Activities in Sudan List or listed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria.

Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (2023), TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY CLERK'S OFFICE, 1 East Broward Blvd, Suite 444, FORT LAUDERDALE, FLORIDA 33301.

Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. 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 Chapter 119, Florida Statutes (2023), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this Agreement if the Contractor does not transfer the records to the City.
4. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor 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.

Insurance

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, Contractor, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of Contractor. Contractor shall provide the City a certificate of insurance evidencing such coverage. Contractor's insurance coverage shall be primary insurance for all applicable policies, in respect to the City's interests. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under this Agreement. All insurance policies shall be through insurers eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, .

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be relied upon by Contractor for assessing the extent or determining appropriate types and limits of coverage to protect Contractor against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

The following insurance policies and coverages are required: Commercial General Liability Coverage must be afforded under a Commercial General Liability policy with limits of:

\$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury

\$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability caused, in whole or in part, by activities performed by or on behalf of the Contractor..

Pollution and Remediation Legal Liability (Hazardous Materials)

For the purpose of this section, the term "hazardous materials" includes all materials and substances that are designated or defined as hazardous by Florida or federal law or by the rules or regulations of Florida or any federal agency. If work being performed involves hazardous materials, the Contractor shall procure and maintain any or all of the following coverage, which will be specifically addressed upon review of exposure. Contractor will self-insure this risk.

Contractor's Pollution Legal Liability Coverage

Pollution legal liability self-insurance in the amount of \$1,000,000 per claim and in the aggregate covering third party claims for bodily injury, property damage or cleanup costs as required by law, where the pollution is caused during and by Contractor's operations under this Agreement.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount of \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes (2023). Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statutes.

To the extent permitted by law, the Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.

The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing and addressed to the certificate holder.

In the event the Agreement term or any surviving obligation of the Contractor following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.

The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

The City shall be included as an Additional Insured by endorsement on all liability policies as respects this agreement, with the exception of Workers' Compensation and Contractor's Pollution coverage.

The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.

The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale 1 East Broward Blvd, Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the total limits required, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, once per Term, coverage forms and limits of Contractor's insurance policies only to the extent that it is required of similar operations of City with 60 days advanced written notice to Contractor.

The Contractor shall provide notice of claims, accidents, and any other occurrences associated with this Agreement to the Contractor's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Deficiencies are the responsibility of the Contractor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative on the dates set below. This quote is only valid for 60 days from the date of this letter.

CR#: 217072

Project Number: A02D4E1

Date Quote Expires: 03/24/2024

AT&T Design Engineer: Darian Garcia (DG659D)

ACCEPTED FOR CUSTOMER:

AT&T CWO Manager

Gene Ferry
Digitally signed by Gene Ferry
Date: 2024.01.30 08:08:16 -06'00'

Company:

CWO Manager Gene Ferry

Printed Name:

Phone Number: (262) 347-5863

Date:

Email Address: gf2431@att.com

Date: January 24, 2024

Please send original signed agreement to AT&T CWO 220 Wisconsin Avenue, FLR 2, Waukesha, WI 53186

CITY OF FORT LAUDERDALE, a Florida
municipal corporation

By: _____
Greg Chavarria
City Manager

Date: _____

ATTEST:

By: _____
David Soloman
City Clerk

Approved as to Legal Form and Correctness:
Thomas J. Ansbro, City Attorney

By: _____
Rhonda Montoya Hasan
Assistant City Attorney

WITNESSES:

(Name of corporation), a (insert type of corporation

Signature

By: _____
(Name and title of person signing)

Print Name

Signature

Print Name

(CORPORATE SEAL)

STATE OF _____ :
COUNTY OF _____ ”

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 202_, by _____ (Name of authorized person) as _____ (title of authorized person) for _____ (Name of corporation), a (type of corporation).

Notary Public, State of
(Signature of Notary Public)

(Print, type or stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____