

FEB 14 2022

Approved

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Jim Simpson

TODAY'S DATE: February 8, 2022

DEPARTMENT:

X County Attorney's Office/Shrf Ofc

SIGNATURE OF DEPARTMENT HEAD:

X _____

REQUESTED AGENDA DATE:

X February 14, 2022

SPECIFIC AGENDA WORDING:

Consideration of Letter and Authorization for Judge Harmon to Sign Letter Agreement and Associated Addendum Between AT&T and Johnson County for AT&T to Perform Services to Relocate Fiber Optic Equipment and Demarcation Point at the Johnson County Sheriff's Office Administration Building

PERSON(S) TO PRESENT ITEM: Dan Milam

SUPPORT MATERIAL: Letter Agreement and Addendum

TIME: 5 min.

ACTION ITEM: Yes

WORKSHOP: _____

(Anticipated number of minutes needed to discuss item)

CONSENT: _____

EXECUTIVE: _____

STAFF NOTICE:

COUNTY ATTORNEY: _____ X _____

ISS DEPARTMENT: _____

AUDITOR: _____

PURCHASING DEPARTMENT: _____

PERSONNEL: _____

PUBLIC WORKS: _____

BUDGET COORDINATOR: _____

OTHER: IT Department - Dan Milam

*****This Section to be Completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____

Date _____



APPLICATION and LETTER OF AGREEMENT FOR CONSTRUCTION SERVICES

October 20, 2021

CR # **212157**

Customer Billing Telephone Number: Special Bill

BILL TO: Johnson County
1 North Main St.
Cleburne, TX 76033

WORK SITE LOCATION: 1102 E. Kilpatrick St. Cleburne, Tx 76031

DESCRIPTION OF CONSTRUCTION SERVICES TO BE PERFORMED:

This cost estimate is for project to relocate fiber Demarc.

LABOR EXPENSE: \$7,556.67 (Contractor Labor: \$1,273.00 AT&T Labor: \$6,283.67)
MATERIAL EXPENSE: \$0.00

ESTIMATED CHARGE FOR CONSTRUCTION SERVICES:

ESTIMATED COST: \$7,556.67
(Actual charges may exceed this estimated cost.)

Applicant requests that Southwestern Bell Telephone Company d/b/a AT&T Texas, (hereafter "SWBT") perform the above-described construction services on Applicant's behalf. Applicant agrees to pay the charge(s) indicated above for such services plus applicable taxes. The work is to be done on an "Actual Cost" basis, all charge(s) will be computed in accordance with SWBT's ordinary accounting practices and will include allocated costs for labor, engineering, materials, transportation, motor vehicles, tool and supply expenses and sundry billings from sub-contractors and suppliers for work and materials related to the job. The Applicant affirms that the cost estimate furnished by the Telephone Company has been considered only as an estimate of approximate costs and that the actual costs incurred by the Telephone Company in doing the work at the particular time and location might be higher. Said estimated cost is subject to change due to any number of factors including, but not limited to, changing conditions in the field, weather delays, or changes in the scope of the work.

Applicant shall pay for the work on an "Actual Cost" basis. Upon completion of the work, AT&T will compute the actual cost of the work. Any difference between the amount of advance payment and the actual cost will be either paid by the Applicant to AT&T or refunded to the Applicant by AT&T as the case may be.

ESTIMATED PRICE QUOTE

The above estimated price is guaranteed for 60 days from October 20, 2021. If the charges are not accepted within 60 days, the order will be cancelled and a new order will need to be placed. The second estimate may be higher than the estimated price set out above.



PAYMENT

Applicant agrees to make an advance payment of **\$7,556.67** prior to commencement of the work. Charges for construction services and applicable taxes will be billed on a special bill separate from the bill that Applicant receives for telephone service.

Applicant, its agents, servants, or employees agree to make payment on change orders within thirty (30) days of the date of signature on the change order. Failure to make payment within the designated thirty (30) day-time period will operate to cancel the change order and SWBT will cease all work activity on the project until payment is made.

When the Applicant agrees to Interval Billing *, the balance of the Contract Price or Actual Cost (as applicable) will be made in monthly payments. If the Actual Cost made varies from the Estimated Cost, then a correcting adjustment will be made in the last payment. If the parties cannot agree to Interval Billing, Applicant will make an advanced payment as indicated above.

*Applicable to orders over \$25,000 and work will take 6 or more months to complete.

TAXES

Applicant will pay and indemnify SWBT against all sales, use and other taxes (excluding income and franchise taxes), including fees, levies, other similar charges, interest and penalties imposed upon and paid by or assessed on SWBT by reason of its sale and installation of material and provision of construction services under this Application except to the extent a valid tax exemption certificate is provided by Applicant to SWBT prior to the delivery of material and provisioning of construction services.

STOP WORK ORDER

In the event that Applicant issues a stop work order, or places the project "on hold", at any point during the progress of the work, said stop work order or request to "hold" work must be issued in writing and must be delivered via certified mail, return receipt requested to the **Custom Work Order Department, 14575 Presidio Square Blvd Rm 111 Houston, TX 77083**. If Applicant issues a stop work order, or a request to "hold" work, the contract price quoted herein will remain valid until sixty (60) days from the date of the stop work or "hold" work order. At the expiration of the sixty (60) days, the contract price quoted herein will expire and a new contract price will be determined and provided, in writing, to Applicant. The new contract price may be higher than the contract price quoted in this custom work order.

If, after issuing a stop work, or "hold" work order, Applicant elects to cancel the contract, Applicant must inform SWBT, in writing of the cancellation. Southwestern Bell Telephone Company will deduct any expenses incurred in performing the work from Applicant's advance payment and refund any remaining funds to Applicant.

Under no circumstances will SWBT, be responsible to Applicant for any alleged damages or additional expenses incurred by Applicant as a result of a stop work order or an order to "hold" work on the project.

CANCELLATION

If the Applicant cancels the work prior to completion, Applicant must notify SWBT, in writing of said cancellation.

If Applicant elects to cancel the work prior to completion, Applicant agrees to pay SWBT for the costs it has incurred in starting performance under the contract. If Applicant has made an advance payment, SWBT will deduct its costs and expenses incurred as of the date of Applicant's notice of cancellation from the amount of the advance payment. Any amount remaining will be refunded to Applicant.



CHANGES IN SCOPE OF WORK OR CHANGES IN FIELD CONDITIONS

Should concealed conditions exist, including conditions that may exist below the surface of the ground, or if conditions exist that could not have been anticipated by SWBT at the time of this agreement, SWBT will be entitled to additional funds and/or additional time to complete the work. Southwestern Bell Telephone Company will request such additional funding and/or additional time through a request for a change order.

Conditions that may materially alter the scope of the work and/or the cost associated with the 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 SWBT, could not reasonably anticipate at the time of providing the above referenced price quote to Applicant.

Should Applicant or its agents, servants, or employees order or seek changes in the scope of the work, SWBT is entitled to seek from Applicant, its agents, servants, or employees, additional funds as necessary to perform the work, and additional time, as necessary to complete the work. Said request for additional funds and/or additional time will be through change order.

All change orders will be in writing.

All change orders will be submitted and accepted by Applicant, its agents, servants or employees, before SWBT proceeds to execute the work or, if work has been initiated on the project, continues with executing the work except in an emergency endangering life or property.

Applicant, its agents, servants or employees, are deemed to have accepted the terms of any change order by signing where indicated on the change order.

Under no circumstances will SWBT's request for a change order be deemed or used as evidence of delay on the project. Nor will any change order issued in this project be used to charge SWBT with responsibility for any alleged delay on the project.

NO DAMAGE FOR DELAY

Under no circumstances will SWBT be held liable to Applicant, Applicant's agents, employees or contractors, for any alleged delay on the project that forms the basis for this agreement for construction services.

TIME TO COMPLETE

Any representation by SWBT, its agents, servants or employees that the project, or any additional work authorized by change order, will be complete by a certain date or certain time period is strictly an estimate and not binding on SWBT, its agents, servants, or employees. 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 SWBT's control, Acts of God, weather delays, labor disputes, vendor/contractor disputes, and other conditions or circumstances that SWBT, its agents, servants, or employees, could not reasonably anticipate at the time of the estimate.

CHOICE OF LAW AND ARBITRATION

Should any dispute arise between the parties concerning the subject matter of this agreement, or any term contained therein, the parties agree that the dispute or claim shall be submitted to binding arbitration before the American Arbitration Association. The parties further agree that the prevailing party in any such dispute will be entitled to recover attorney's fees and costs of arbitration.

Texas law governs the application of this agreement and all terms contained therein.



INDEMNIFICATION AND HOLD HARMLESS

Applicant, its agents, servants, and employees hereby agree to indemnify and hold harmless SWBT, and its employees, agents and contractors, from and against any and all claims, costs, expenses, judgments or actions for damage to property or injury or death to persons, and/or arising from or relating to the work that is the subject of this agreement, to the extent any such claims are caused by the negligent acts or omissions of the Applicant, its agents, servants, or employees.

ENTIRE AGREEMENT

The parties agree that the terms set forth herein constitute the entire agreement and there are no other agreements regarding the project that is the subject of this agreement between the parties.

MODIFICATION & NOTICE

Any modification to this agreement must be made in writing and signed by both parties. Any party to this agreement may provide the other party with notice of any fact or condition by providing such information in writing and serving said writing via certified mail, return receipt requested.

**ACCEPTED FOR
CUSTOMER:**

CR# 212157



Authorized Signature, Title or
Relationship to Company or Individual

Company: Johnson County

Printed
Name: Roger Harmon

Date: 2-14-22

ACCEPTED FOR AT&T:

De'Angelo Barnes Digitally signed by De'Angelo Barnes
Date: 2022.02.07 15:56:33 -06'00'

Authorized Signature, Title or
Relationship to Company or Individual

Company: AT&T

Printed
Name: De'Angelo Barnes

Date: 2/07/2022



AT&T Texas

October 20, 2021

RE: CR # 212157

This letter is regarding your request for Southwestern Bell Telephone Company d/b/a AT&T Texas (hereafter "SWBT") to perform construction services for you. Enclosed please find an Application and Letter of Agreement for Construction Services. This application describes the construction services you have requested along with the associated charges for us to do the work. We require an advance payment on this amount, which is also shown on the application.

Both the **SIGNED APPLICATION** and the **ADVANCE PAYMENT**, made payable to AT&T, must be received by our office before we can proceed on your behalf with the work. Our mailing address for these documents is listed below:

**AT&T – CWO
Attn: Esmeralda Ceballos
14575 Presidio Square Blvd.
Flr. 1 Rm 111
Houston, TX 77083**

If you decide not to proceed with this work, please call our business office so that we may cancel your request. As always, please feel free to contact our business office at 888-321-8535 if you have any questions regarding this matter.

Please refer to the record number at the top of your application to assist us in locating your file.

Sincerely,

Esmeralda Ceballos
AT&T CWO

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a.
AT&T TEXAS

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **JOHNSON COUNTY, TEXAS**, a political subdivision of the State of Texas, (hereinafter referred to as “**COUNTY**” and referred to as “**CUSTOMER**” in the Letter of Agreement for Construction Services (CR# 212157) (hereinafter “the Agreement”) put forth by **SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a. AT&T TEXAS**. The term “**COMPANY**” as used herein refers to **SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a. AT&T TEXAS**. **JOHNSON COUNTY, SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a. AT&T TEXAS**, (or both, as may be applicable) may be collectively identified as the “**Parties**” or each individually a “**Party**”). **This Addendum is part of the Agreement with SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a. AT&T TEXAS and is intended to modify (as set forth in this Addendum) the Agreement put forth by SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a. AT&T TEXAS.**

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas**. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

To the extent permitted by law, Johnson County agrees to indemnify and hold harmless

AT&T for the County's negligence or willful misconduct.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or

- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

6.1

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that COMPANY might lawfully seek to claim as confidential, then County will forward the request to COMPANY. It shall be the obligation of COMPANY to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with COMPANY in making such submission to the Texas Attorney General's Office. **COMPANY acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

6.3

Services and products provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by **COMPANY** pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. **Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 60 months from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.**

7.2

At any time following the expiration of 180 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without charges for unutilized term, or penalty of any kind, by giving COMPANY 90 days written notice of such termination. COUNTY shall be responsible for paying COMPANY for its direct costs up to the point of termination.

8.1

COMPANY certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. COMPANY states that it is not ineligible to receive State or Federal funds due to child support arrearages

8.2

COMPANY verifies that it does not boycott Israel and will not boycott Israel during the

term of this contract. The term “boycott Israel” is as defined by Texas Government Code Section 808.001, effective September 1, 2017. COMPANY further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term “foreign terrorist organization” means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

8.3

COMPANY verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

8.4

COMPANY verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

In this provision:

- (1) “Boycott energy company” has the meaning assigned by Section 809.001.
- (2) “Company” has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.
- (3) “Governmental entity” has the meaning assigned by Section 2251.001.

9.1

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

9.2

Notwithstanding any other provision in this Addendum or the associated documents, to the extent COMPANY is being contracted to provide information technology and services or to maintain and make available information for use by Johnson County and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.

9.3

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. **THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY COMPANY IS HEREBY DELETED.**

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:




Roger Harmon

2-14-22

Date

As Johnson County Judge

Attest: 

County Clerk, Johnson County



2-14-22

Date

SOUTHWESTERN BELL TELEPHONE COMPANY d.b.a. AT&T TEXAS:

De'Angelo Barnes Digitally signed by De'Angelo Barnes
Date: 2022.02.07 15:53:37 -06'00'

Authorized Representative of
SOUTHWESTERN BELL TELEPHONE COMPANY
d.b.a. AT&T TEXAS

2/07/2022

Date

Printed Name: De'Angelo Barnes

Title: CWO Manager