

Council Member _____ introduced the following Resolution, which was seconded by Council Member _____.



RESOLUTION 072224-Q

A RESOLUTION TO ENTER INTO A CONTRACTUAL AGREEMENT WITH AT&T TO REARRANGE EXISTING AT&T FACILITIES RELATED TO THE NEW RECREATION CENTER AND LIBRARY PROJECT

WHEREAS, the Mayor and City Council of the City of Alabaster, Alabama, have determined that it is both wise and expedient to enter into said contractual agreement with AT&T for relocation of AT&T facilities for the Alabaster Recreation Center and Library Project; and

WHEREAS, the amount of this service agreement (see attached Exhibit "A") will not to exceed **\$336,635.56** and will include the following:

<i>Estimated Actual Cost Quote</i>	
Expenses	Amount
ENGINEERING LABOR	\$ 53,944.60
MATERIAL COST	\$ 46,914.75
CONSTRUCTION LABOR	\$ 223,166.47
CONTRACTOR COST	\$ 12,609.74
MISC. COST	\$ 0.00
	Estimated Contract Price \$ 336,635.56
	<i>Less Credits/Payments</i> \$ 0.00
	Estimated Balance Due \$ 336,635.56

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Alabaster, does hereby authorize Scott Brakefield, Mayor of the City of Alabaster and J. Mark Frey, City Clerk, to sign, attest and file all documentation necessary to enter into said contract.

BE IT FURTHER RESOLVED, that, if required, the Finance Director is authorized to amend the FY24 budget in order to maintain a balanced budget.

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

ADOPTED AND APPROVED THIS 22ND DAY OF JULY 2024.

ATTEST:

CITY OF ALABASTER

J. Mark Frey, City Clerk

Sophie Martin, Council President

APPROVED

Scott Brakefield, Mayor



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

May 1, 2024

CWO- 30460

Project Number: A02SW2P

Customer Name: CITY OF ALABASTER
 Billing Address: 1953 MUNICIPAL WAY ALABASTER AL 35007
 Contact Name: FRED HAWKINS
 Contact email Address: FHAWKINS@CITYOFALABASTER.COM
 Contact Phone Number: (205) 937-0056
 Site Location: 10019 HWY 119 ALABASTER AL

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

RELOCATE FACILITIES

<i>Estimated Actual Cost Quote</i>	
Expenses	Amount
ENGINEERING LABOR	\$ 53,944.60
MATERIAL COST	\$ 46,914.75
CONSTRUCTION LABOR	\$ 223,166.47
CONTRACTOR COST	\$ 12,609.74
MISC. COST	\$ 0.00
	Estimated Contract Price \$ 336,635.56
	Less Credits/Payments \$ 0.00
	Estimated Balance Due \$ 336,635.56

Special construction charges apply. Engineering and Construction will not begin until the attached contract 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

CWO-30460

Project Number: A02SW2P

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 ALABASTER (Customer).

AT&T and Customer hereby agree to following terms:

- Tariffs/Guidebooks.** This Agreement is subject to and controlled by the provisions of AT&T's tariffs/guidebooks as applicable and all such revisions to said documents as may be made from time to time.
- 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"). Payment in full based on actual costs is required within thirty days after AT&T issues an invoice to the Customer for the Special Construction Charges.
- Price Quote.** The price is guaranteed for 60 days from May 1, 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.
- 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.
- Limitation of Liability.** AT&T's maximum liability arising in, out of or in any way connected to this Agreement shall be as set forth in the tariffs and/or guidebooks, as applicable, and in no event shall exceed Special Construction Charges paid by Customer to AT&T.



6. **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 contract, the above cost estimate and this contract are null and void. A new cost estimate must be provided based on the new scope of work and a new contract entered. Additionally, if the contractor bid exceeds the estimated contractor costs the applicant will be responsible for 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.

7. **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 contract, 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.

8. **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.

9. **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.



10. **Indemnification and Hold Harmless.** Both parties, its agents, servants, and employees hereby agree to indemnify and hold harmless each other, 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 each party, its agents, servants, or employees.

11. **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 it 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.
- J. **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

12. **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.



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.

CWO-30460
Project Number: A02SW2P
Date Quote Expires: 7/1/2024
AT&T Design Engineer: RUSS, CHANDLER <cr8470@att.com>

ACCEPTED FOR CUSTOMER:

AT&T CWO Manager Contact Information



Authorized Signature

Tristram Villiers Digitally signed by Tristram Villiers
Date: 2024.05.01 11:25:10 -0500

CWO Manager

Title: Mayor
Company: City of Alabaster
Printed Name: Scott Brakefield
Date: 07/22/2024

Phone Number: (262) 347-9541
Email Address: TV326H@ATT.COM
Date: May 1, 2024

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