

ITEM #64(A)

**ADDITIONAL MATERIAL
10:00 A.M. REGULAR MEETING**

MARCH 20, 2018

SUBMITTED AT THE REQUEST OF

**FINANCE and ADMINISTRATIVE
SERVICES DEPARTMENT**



Finance and Administrative Services Department

PURCHASING DIVISION

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

MEMORANDUM

DATE: March 15, 2018

TO: Board of County Commissioners

THRU: Kevin B. Kelleher, Deputy CFO/Deputy Director
Finance and Administrative Services Department

Digitally signed by KEVIN
KELLEHER
Date: 2018.03.15
17:27:45 -04'00'

FROM: Brenda J. Billingsley, Director
Purchasing Division

**BRENDA
BILLINGSLEY**

Digitally signed by BRENDA
BILLINGSLEY
DN: dc=city, dc=broward, dc=bc,
ou=Organization, ou=BCC, ou=PU,
ou=Users, cn=BRENDA BILLINGSLEY
Date: 2018.03.15 13:04:34 -04'00'

SUBJECT: March 20, 2018 - Commission Meeting - Agenda Item No. 64A
Motion to Approve Agreement between Broward County and AT&T Corp
(AT&T) for Countywide Data Circuits, Request for Proposals (RFP) No.
R1373502P1 for Groups I and II.

Attached is the revised Agreement Summary (Exhibit 1) which now includes the
Disclosure Items for AT&T Data Circuits, pages 3 and 4, detailing exceptions to Broward
County's standard contractual terms and conditions.

Attachment

BJB/lg/hmm

- c: Bertha Henry, County Administrator
- Monica Cepero, Deputy County Administrator
- George Tablack, CPA, Chief Financial Officer
- John Bruno, Chief Information Officer, Enterprise Technology Services Division
- Robert Melton, County Auditor
- Andrew Meyers, County Attorney

14. Renewal or Extension Terms:

RENEWAL:

COUNTY SHALL HAVE THE OPTION TO RENEW THIS AGREEMENT FOR FIVE (5) ADDITIONAL ONE (1) YEAR TERMS BY SENDING NOTICE THEREOF TO PROVIDER AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN-CURRENT TERM (EACH, A "RENEWAL TERM"). THE PURCHASING DIRECTOR IS AUTHORIZED TO EXERCISE THIS RENEWAL OPTION.

EXTENSIONS: IN THE EVENT THAT UNUSUAL OR EXCEPTIONAL CIRCUMSTANCES, AS DETERMINED IN THE SOLE DISCRETION OF THE PURCHASING DIRECTOR, RENDER THE EXERCISE OF AN EXTENSION NOT PRACTICABLE OR IF NO EXTENSION IS AVAILABLE, AND EXPIRATION OF THIS AGREEMENT WOULD RESULT IN A GAP IN THE PROVISION OF SERVICES NECESSARY FOR THE ONGOING OPERATIONS OF THE COUNTY, THEN THIS AGREEMENT MAY BE EXTENDED ON THE SAME TERMS AND CONDITIONS BY THE PURCHASING DIRECTOR FOR PERIOD(S) NOT TO EXCEED SIX (6) MONTHS IN THE AGGREGATE.

15. Termination and Cancellation Provisions

For Cause: Article 11 This Agreement may be terminated for cause based on any breach that is not cured within ten (10) days after written notice from the aggrieved part identifying the breach.

For Convenience: Article 11 This Agreement may be terminated for convenience by the Board upon providing written notice to Provider of the termination date, which shall not be less than thirty (30) days after the date such written notice is provided.

16. Deliverables, milestones or scope of this action:

Provider may submit invoices only for goods provided and services completed in accordance with the applicable Order or Pricing Schedule, and in accordance with Exhibit B (Payment Schedule). Unless otherwise indicated in the applicable Order, Pricing Schedule or Exhibit B, an original plus one copy of each invoice must be submitted within fifteen (15) days after the billing period for which payment is sought, except that the final invoice must be submitted no later than sixty (60) days after all services are completed. Unless otherwise stated in Exhibit B or the applicable Work Authorization, any Optional Services shall be invoiced in accordance with the existing invoicing schedule for any like goods or services provided under this Agreement, including (if applicable) invoiced pro rata for the initial invoice period.

17. List terms, considerations or deviations from standard county form.

Disclosure Items for Data Circuits and Support Master Agreement are found In Exhibit 1, Page 3.

DISCLOSURE ITEMS FOR AT&T DATA CIRCUITS

ISSUE	CONTRACT LANGUAGE
Term	<ul style="list-style-type: none"> Any Order may continue under an existing Order or Pricing Schedule after the Term of the Agreement on a month-to-month basis at the prices in effect on the last day of the Pricing Schedule Term; after the end of the term of the Pricing Schedule, AT&T may change pricing on 30 days' notice. (5.7)
Termination	<ul style="list-style-type: none"> Service cancellation prior to cutover may impose on County actual costs associated with removal of non-County equipment in termination charges; termination of install orders prior to service activation will incur flat fee of \$200 (Exhibit A)
Indemnification	<ul style="list-style-type: none"> Indemnification language is nonstandard, but tracks the language utilized in the existing Master Agreement with AT&T (8.1) and includes indemnification for property damage, death, bodily injury, data disclosure, or intellectual property claims. AT&T is not obligated to indemnify claims that arise from County's content, use, or modification of the services provided (8.1.6)
Limitation of Liability	<ul style="list-style-type: none"> Limitation of liability is modified to mirror the current Master Agreement warranty provisions previously negotiated by the Parties (8.2), including that liability is generally limited to direct damages for personal injury, death, or property damage, indemnification for a third-party claim, and all other claims limited for each 12 month period to greater of \$250k or the net charges during the prior 24 months (8.2.1) AT&T is not liable for damage arising out of interoperability, service delays, lost messages, unauthorized access, loss of data, etc. (8.3)
Warranties	<ul style="list-style-type: none"> AT&T does not provide an intellectual property warranty; instead, AT&T provides indemnification for IP claims (8.1.2) Warranty provisions are modified to mirror the current Master Agreement warranty provisions previously negotiated by the Parties (6.4, 6.5). All other warranties are disclaimed (8.5) including Equipment warranties (AT&T is not providing equipment, but rather services).
Statute of Limitations	<ul style="list-style-type: none"> If County disputes a charge, County must notify AT&T within 12 months of the date of the first invoice (5.6).
Fees	<ul style="list-style-type: none"> Fees as set per Pricing Schedule, which must be separately approved by the Director of Purchasing (1.8, 5.1) County has committed to take reasonable actions to obtain funding for services, and if funds are insufficient and an alternative resolution cannot be negotiated with AT&T, County can terminate but agrees not to contract with any other provider for the same or substantially similar services or equipment for the remaining term of the terminated order (4.3) County is responsible to pay all fees, surcharges, "and other similar charges" which may include additional charges not yet identified; such fees must be stated in the Pricing Schedule; if County deems any fee excessive other than a government pass-thru charge, County may terminate the Pricing Schedule with no termination fees or

	<p>cancellation charges. (Exhibit B)</p> <ul style="list-style-type: none">• County may be required to pay special construction charges on a per project basis; AT&T waives first \$50k per project (Exhibit B)
Interest	<ul style="list-style-type: none">• Amounts withheld are not subject to interest to the extent the dispute is resolved in County's favor (5.2); however, interest on late payments may be charged to the extent permitted under Florida law (12.21).
Service Level Agreements	<ul style="list-style-type: none">• Separate Service Level Agreements are included for the separate categories of services (Exhibits F-1, F-2, and F-3); each was heavily negotiated by the parties and is materially different from County form, but appropriate to the circumstances and needs of the County in the opinion of ETS.