

CRIADO

City of Keller
Mr. Chad Bartee, PE
1100 Bear Creek Parkway
Keller, Texas 76248

April 6, 2020

RE: City of Keller Construction Inspection for Telecom Installation at various locations
(CRIADO Project # R14758.00)

Dear Mr. Bartee,

Criado & Associates is pleased to submit this proposal to provide additional construction inspection for various telecommunication services related to the City of Keller. This proposal is made part of and governed by the terms and provisions of the attached General Terms and Conditions, dated March 31, 2020 ("Agreement"), by and between the City of Keller ("the Client") and Criado & Associates, Inc. ("the Consultant").

SCOPE OF SERVICES: Subconsultant agrees to perform the following scope of services in accordance with the Payment Basis, Estimated Quantity of Services and Estimated Cost of Services set forth below. Subconsultant shall not perform services which exceed the Estimated Cost of Services without prior written notice to and approval by Consultant.

CRIADO shall provide inspection services for the installation of underground telecommunications at the locations listed below:

- 1016 N. Pearson, (T Mobile 25 Towers -DA02228D_10-16-2019),
- Keller Parkway southwest of Pearson
- Other locations TBD by City of Keller

Services will also include one pre-construction meeting per site and daily reports for onsite inspections as needed. If any public utilities are affected during our site inspection visits, CRIADO shall notify the City of Keller designated point of contact for emergencies, utility superintendent.

City of Keller point of contact for this contract is Chad Bartee, PE.

Consultant's project manager for this contract is Patrick Dunn.

PAYMENT BASIS: Compensation Method: **Hourly – Not to Exceed**

City Contract No. 19-15-02:	\$48,000
*Additional Inspection Budget:	<u>\$50,000</u>
Maximum Amount:	\$98,000

Criado has already billed \$46,630.74 for inspection services, leaving \$51,369.26 remaining in the budget for additional inspection.

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CRIADO HOURLY RATES:

Sr. Project Manager.....	\$220
Sr. Utility Coordinator.....	\$160
Senior Construction Inspector.....	\$130
Junior Construction Inspector.....	\$115
Engineer in Training.....	\$100
Direct Costs.....	x1.10

SCHEDULE OF WORK: Due to the undetermined construction schedule and number of locations for these proposed fiber construction sites, the anticipated frequency of site visits and total level of effort needed cannot be determined at this time, both parties agree that CRIADO shall perform these services at the rates listed in the Fee Schedule above, and that CRIADO will stop work at the point in time when the maximum fee has been reached. If additional services are needed beyond that time an additional fee will be awarded as mutually agreed in writing by both parties.

*Refer to Article III in the General Terms and Conditions for guidelines and invoicing requirements.

CONTRACT TERM: This agreement shall expire on September 30, 2020, the last day of the City's Fiscal Year. The Client reserves the right to renew and extend the contract for up to two additional one-year terms.

APPROVAL/ACCEPTANCE:

Acceptance of this proposal is acknowledged by the following signatures of the authorized representatives of the parties to the Agreement.

AGREED AND EXECUTED this _____ day of _____, 20____.

CRIADO & ASSOCIATES, INC.

City of Keller

BY: _____

BY: _____

Cristina Criado

Printed or Typed Name

Printed or Typed Name

TITLE: President/CEO

TITLE: _____

4100 Spring Valley Road, Suite 1001
Dallas, TX 75244
Phone: 972-392-9092

1100 Bear Creek Pkwy
Keller, Texas 76248
Phone: 817-743-4083

Criado & Associates, Inc.

General Terms and Conditions

This Agreement is made between **Criado & Associates, Inc.**, a Texas corporation, (hereinafter referred to as "**CONSULTANT**") having a place of business located at **4100 Spring Valley Road, Suite 1001 Dallas, Texas 75244** and **The City of Keller** (hereinafter referred to as "**CLIENT**") having a place of business located at **1100 Bear Creek Parkway Keller, Texas 76248** and is subject to the following terms and conditions to which the parties mutually agree:

I. SCOPE OF SERVICES TO BE RENDERED

CONSULTANT agrees to perform the services described in the attached letter proposal dated April 6, 2020 for **construction inspection for various telecommunication services** which incorporates these terms and conditions. Unless modified in writing by the parties hereto, the duties of CONSULTANT shall not be construed to exceed those services specifically set forth in the letter of proposal. The letter of proposal and these General Terms and Conditions, when executed by CLIENT, shall constitute a binding Agreement on both parties. CONSULTANT will commence the services upon receipt of an executed copy of this Agreement signed by an authorized representative of CLIENT and by an authorized representative of CONSULTANT.

II. AMENDMENTS

CLIENT, without invalidating this Agreement, may request changes within the general scope of the Services required by this Agreement by altering or adding to the Services to be performed, and any of such changes in the Services shall be performed subject to this Agreement. Upon receiving the CLIENT's request, CONSULTANT, shall return to CLIENT a written change proposal setting forth an adjustment to the services and cost estimated by CONSULTANT to represent the value of the requested changes. Following CLIENT's review of CONSULTANT's change proposal, CLIENT shall execute said written proposal authorizing CONSULTANT to perform the changes in the Services.

III. COMPENSATION

CONSULTANT shall be compensated in accordance with the aforesaid reference letter of proposal and any subsequent executed change proposals or amendments to said proposal. Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1.50% percent per month or lesser maximum enforceable interest rate, from the date the CLIENT received the invoice until the date CONSULTANT receives payment. Such interest is due and payable when the overdue payment is made.

Direct costs such as application fees, review fees, blueprinting, reproduction, delivery fees, etc. are not included in the fees above and will be charged at cost times a multiplier of 1.10. Subcontracted services will be billed at actual cost plus a service charge of 10%.

Should CLIENT object to all or any part of charges appearing on the invoice, CLIENT shall provide written notification to CONSULTANT within 15 days of receipt of said invoice. The portion of the invoice that is not in dispute shall be paid by CLIENT within 30 days of receipt of said invoice. If legal action is necessary to enforce payment provisions of this Agreement, CONSULTANT shall be entitled to collect from CLIENT any judgment or settlement sums due, reasonable attorney's fees, court cost and expenses incurred by CONSULTANT in connection therewith.

If CLIENT for any reason fails to pay the undisputed portion of any invoice within 30 days of presentation, CONSULTANT has the right to cease work on the project and CLIENT shall waive any claim against CONSULTANT for cessation of services. In the event the project is restarted, CLIENT shall also pay the

Criado & Associates, Inc.

General Terms and Conditions (continued)

cost of restarting and shall renegotiate appropriate contract terms and conditions, such as those associated with budget, schedule or scope of service.

IV. DELAYS, SUSPENSION AND TERMINATION

In the event the services cannot be performed on or before the projected due date because of circumstances beyond the control of CONSULTANT, including, but not limited to strike, fire, riot, excessive precipitation, act of God, governmental action, third party action or action of omission by CLIENT, the services, time for completion and fees associated with this Agreement shall be amended by CLIENT and CONSULTANT in accordance with Article II of this Agreement. If either party fails to negotiate in good faith, the other party may, upon 5 days written notice, suspend services until resolution of the issue or may terminate this Agreement.

CLIENT's failure to make payment to CONSULTANT in accordance with the payment terms herein shall constitute a material breach of this Agreement and shall be cause for termination by CONSULTANT.

CLIENT or CONSULTANT may terminate this Agreement upon forty-eight (48) hours written notice should the other party fail substantially to perform in accordance with the terms and conditions of this Agreement through no fault of the terminating party. Notice of termination shall be by certified mail and shall be sent to:

CONSULTANT:

Attention: Cristina Criado
Criado & Associates, Inc.
4100 Spring Valley Road, Suite 1001
Dallas, TX 75244

CLIENT:

Attention: Chad Barte, PE
City of Keller
1100 Bear Creek Parkway
Keller, TX 76248

A complete settlement of all claims upon such termination of this Agreement shall be made as follows: CLIENT shall compensate CONSULTANT for the services performed up to the date of receipt of notice of termination, plus reasonable costs incurred in terminating the services in accordance with CONSULTANT's current fee schedule.

V. RIGHT OF ENTRY

CLIENT shall provide for CONSULTANT right to enter from time to time, property owned by CLIENT, and/or others to provide those services described in the Letter Proposal's Scope of Work included hereunder.

VI. INFORMATION PROVIDED BY OTHERS

CONSULTANT shall indicate to CLIENT the information needed for rendering of services hereunder, and CLIENT shall provide to CONSULTANT such information as is available to CLIENT. CLIENT recognizes that it is impossible for CONSULTANT to assure the sufficiency of such information, either because it is impossible to do so, or because of errors or omissions, which may have occurred in assembling the information. Accordingly, CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to CONSULTANT by CLIENT. Further, CLIENT agrees to compensate CONSULTANT for any time spent or expenses incurred

General Terms and Conditions (continued)

by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT's fee schedule and expense reimbursement policy.

VII. CONSTRUCTION ACTIVITIES

CLIENT agrees that the General Contractor is solely responsible for job site safety and for construction means, methods, sequence, techniques and procedures necessary for performing, superintending and/or coordination of all construction activities and warrants that this intent shall be made evident in CLIENTS' agreement with the General Contractor.

VIII. CONFIDENTIALITY

CONSULTANT shall maintain as confidential, and not disclose to others without CLIENTS' prior written consent, all information obtained from CLIENT, not otherwise previously known to CONSULTANT in the public domain. The provisions of this paragraph shall not apply to information in whatever form which (i) is published or comes into the public domain through no fault of CONSULTANT, (ii) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (iii) is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction. CONSULTANT will notify CLIENT in writing immediately if information is requested under item (iii) above.

IX. OWNERSHIP OF INSTRUMENT OF SERVICE

All intellectual property developed in the performance of the Service, and all records relating to the Service, including without limitation, all drawings, plans, specifications, reports, summaries, samples, photographs, memoranda, notes, calculations, field data, field notes, estimates and other documents prepared by CONSULTANT, as instruments of service shall remain the property of CONSULTANT. CONSULTANT shall retain these records for a period not less than four (4) years following completion of services, during which period they will be made available to CLIENT at all reasonable times.

X. INDEMNIFICATION

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS CONSULTANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONSULTANTS FROM AND AGAINST ALL DAMAGE, LIABILITY OR COST, INCLUDING REASONABLE ATTORNEYS' FEES AND DEFENSE COSTS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS PROJECT OR THE PERFORMANCE BY ANY OF THE PARTIES OF THE SERVICES UNDER THIS AGREEMENT, EXCEPTING ONLY THOSE DAMAGES, LIABILITIES OR COSTS ATTRIBUTABLE TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONSULTANT.

XI. LIMITATION OF LIABILITY

IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND CONSULTANT, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF CONSULTANT AND CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, SHAREHOLDERS, OWNERS AND SUBCONSULTANTS FOR ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS EXPENSES FROM ANY CAUSE OR CAUSES, INCLUDING ATTORNEYS' FEES AND COSTS AND EXPERT-WITNESS FEES AND COSTS, SO THAT THE TOTAL AGGREGATE LIABILITY OF CONSULTANT AND CONSULTANT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, SHAREHOLDERS, OWNERS AND SUBCONSULTANTS SHALL NOT EXCEED CONSULTANT 'S TOTAL FEE FOR SERVICES RENDERED ON THIS PROJECT. IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION HOWEVER ALLEGED OR ARISING, UNLESS OTHERWISE PROHIBITED BY LAW.

XII. FIDUCIARY RESPONSIBILITY

CLIENT confirms that neither CONSULTANT nor any of CONSULTANT's subconsultants or subcontractors has offered any fiduciary service to the CLIENT and no fiduciary responsibility shall be owed to the CLIENT by CONSULTANT or any of CONSULTANT's subconsultants or subcontractors, as a consequence of CONSULTANT's entering into this Agreement with the CLIENT. If this Agreement is a Subcontract to CLIENT's agreement with OWNER, CLIENT also confirms that neither CONSULTANT nor any of CONSULTANT's Subconsultants owes a fiduciary responsibility to the CLIENT or OWNER. CLIENT shall, as a material element of the consideration to the CONSULTANT, require OWNER to formally recognize this provision in CLIENT's agreement with OWNER.

XIII. INSURANCE

CONSULTANT acknowledges that it now carries and will continue during the terms of this Agreement to carry the following minimum insurance:

1. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability of a limit not less than \$1,000,000.
2. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
3. Statutory workers' compensation and employers' liability insurance as required by state law.
4. Professional liability insurance.

XIV. SUBCONTRACTS

CONSULTANT shall be entitled, to the extent determined appropriate by CONSULTANT, to subcontract any portion of the work to be performed under this project. CONSULTANT may use the services of persons and entities not in the employ of CONSULTANT when it is appropriate and customary to do so. Such persons and entities include, but are not limited to, surveyors, specialized consultants, and testing laboratories. CONSULTANT's use of others for additional services shall not be unreasonably restricted by CLIENT.

XV. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. The Agreement is not to be assigned by either CLIENT or CONSULTANT without the prior written consent of the other.

XVI. INTEGRATION

These Terms and Conditions and the Letter of Proposal, to which is attached, represent the entire understanding of CLIENT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both parties.

XVII. JURISDICTION AND VENUE

This Agreement shall be construed in all with the laws of Texas, and the parties agree that the contract is payable and performable in Dallas, Texas and Venue for dispute resolution shall be in Dallas, Texas.

XVIII. ALTERNATIVE DISPUTE RESOLUTION

Criado & Associates, Inc.

General Terms and Conditions (continued)

It is agreed by both parties that Arbitration, in any form, will not be allowed. Any claim(s), dispute(s) or other matter(s) in question between the parties to this Agreement arising out of or relating to this Agreement, or the breach thereof, which are not disposed by mutual agreement of the parties, shall be submitted, if agreed in writing by both parties, to mediation prior to submission of the matters in question to appropriate courts of law.

APPROVED:

CONSULTANT: CRIADO & ASSOCIATES, INC.

Signature: _____

Typed or Printed Name: Cristina Criado, PE

Title: President/ CEO

Date: _____

APPROVED:

CLIENT: City of Keller

Signature: _____

Typed or Printed Name: _____

Title: _____

Date: _____