

**CITY OF CALLAWAY
BOARD OF COMMISSIONERS
AGENDA ITEM SUMMARY**

DATE: JANUARY 26, 2016

ITEM: BID AWARD – BID No. CM2016-01 TELECOMMUNICATION SERVICES

1. PLACED ON AGENDA BY:

J. Michael Fuller, City Manager

2. AGENDA:

- PRESENTATION
- PUBLIC HEARING
- CONSENT
- OLD BUSINESS
- REGULAR

3. IS THIS ITEM BUDGETED (IF APPLICABLE)?: YES NO

4. BACKGROUND: (WHY, WHAT, WHO, WHERE, WHEN, HOW, & IDENTIFY ALL ATTACHMENTS)

On January 20, 2016 the City of Callaway received bids for Telecommunication Services. Currently WOW provides the city's phone services and their contract expires at the end of February 2016. Wow/Knology of Florida, LLC, was the only vendor to submit a bid. Their bid was as follows:

BIDDER	BASE BID	NON-RECURRING COSTS
WOW/Knology of Florida, LLC	\$3,171.09 Monthly	\$5,300 for rewiring of City Hall and the Department of Public Works

Currently, monthly recurring costs average \$4,045.24 per month city-wide. Their proposal reflects a monthly savings of around \$875 for an annual savings of approximately \$10,000. There may be minimal adjustments to the monthly recurring costs but staff does not expect them to exceed what the City is currently paying.

Staff, after complete review of the bid submitted, recommends award to WOW/Knology of Florida, LLC for a term of 3 years with three (3) additional one (1) year renewals upon agreement of the vendor and approval by Commission.

ATTACHMENT:

- BID CERTIFICATION FORM
- OVERVIEW OF MONTHLY RECURRING COSTS
- CONTRACT

5. REQUESTED MOTION/ACTION: Staff recommends approval of the award of the Telecommunication Services bid to WOW/Knology of Florida, LLC, and to authorize the Mayor to sign the contract for a 3-year term ending March 1, 2019.

BID/CERTIFICATION FORM
CITY OF CALLAWAY
TELECOMMUNICATONS SERVICES
BID NO.: CM2016-01

BIDDERS CERTIFICATION TO THE CITY OF CALLAWAY:

1. The undersigned warrants that: (A) This Bid is submitted in response to, and is in compliance with, all terms and conditions applicable thereto as set forth in the Advertisement, Instructions to Bidders, General Instructions and Conditions, Special Instructions and Conditions, Bid/Certification Forms and (if any), the Minimum Technical Specifications, Plans, Addendum, Exhibits, Agreement, Bonds, and Insurance Requirements, each of which has been carefully examined, (B) Bidder or Bidder's representative has made such investigation as is necessary to determine the character and extent of the work and their capability to perform the work, and (C) agrees that if the Bid is accepted by the City, Bidder will provide the necessary labor, materials, machinery, equipment, tools or apparatus, and perform all the work or services required to complete the assignment and/or contract within the time specified according to the requirements of the City as herein and hereinafter set forth, and (D) he/she is authorized to legally execute binding contracts for and on behalf of the Bidder.

2. Please check one:
 Bidder declares that the only person, persons, company, or parties interested in this Bid are named in the Bid.

 Bidder, or one or more of bidder's officers, principals, or any owner of more than 5% in or of bidder, or members of their immediate families: (A) have a financial interest in another company, project, or property that could benefit financially from this proposed project; and/or (B) another individual or business will be compensated by (or on behalf of bidder) if Bidder is selected by the City to bid the requested services. (Attach a detailed explanation for either.)

3. Bid Bond - If the Bid is accepted by the City, it will become a binding contract on both parties. If a Bid Bond or Cashier's Check/Certified Check is required, it shall be submitted with the Bid. If the undersigned shall fail to deliver or perform, or if applicable, execute a Contract as stated herein, then the City may, at its option, determine that the undersigned has abandoned the Award/Contract, and thereupon such Bid and/or Award shall be null and void, and any Cashier's Check/Certified Check or Bond accompanying this Bid shall be forfeited to and become the property of the City, and the full amount of said check, or if a Bid Bond, the full amount of such bond, shall be paid to the City as partial liquidated damages; otherwise, any Bond or Cashier's Check/Certified Check accompanying this Bid shall be returned to the undersigned within 30 calendar days from the date of Award, or if provisions for a Notice to Proceed are included, from the date of the Notice to Proceed.

4. Bidder proposes and agrees to provide all materials, services or equipment required for the City of Callaway **TELECOMMUNICATION SERVICES BID NO.: CM2016-01**, for the Total Bid Sum of Three thousand, one hundred & seventy-one and 09/100 Dollars (\$ 3,171.09 Mo). + 5300.00 in non-recurring charges

5. Number of days from date of the Notice to Proceed that will be required for the final completion of all work as described herein.

60 days
(Maximum 60 Calendar Days)

6. The City reserves the right to accept any or all prices itemized in any combination that best serves the interests of the City. The City further reserves the right to accept or reject any of the components of this Bid, including alternates.

7. BIDDER HEREBY ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUMS: tds

Name of Bidder: Knology of Florida, LLC

Business structure: (x) Corporation, () Partnership, () Individual, () Other: _____

If a Partnership: _____

Name(s) of Partner(s): _____

If a Corporation: _____

Incorporated in State of: DE Date of Incorporation: 04.08.1998

Business Address: 235 W 15th St.

City: Panama City State FL Zip 32401

Telephone Number: (850) 215.1310 Fax (850) 215.0922

Submitted By: Tammy Stewart, on behalf of Steve Pozil, VP, Area for WOW! SE Region
(Print)

Title: Business Account Manager

Signature: [Handwritten Signature]

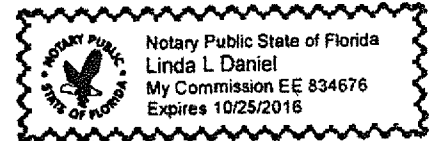
ATTEST: _____
Secretary

By: _____
Print Name

Affix Corporate Seal
(If Corporation)

State of Florida
County of Bay

The foregoing instrument was acknowledged before me this 19th day of Jan, 2016 by Tammy Stewart,
who is personally known to me or who presented _____ as identification, and who (did) (did not) take
an oath.



[Handwritten Signature]
[Signature of Notary Public]

Linda L. Daniel
[Printed, typed or stamped name of Notary Public]

NOTE: BIDS MAY BE REJECTED IF ALL DOCUMENTS ARE NOT COMPLETE AND EXECUTED, AND THE NUMBER OF COPIES SPECIFIED/REQUESTED OF EACH ARE NOT SUBMITTED WITH THE BID.

CITY OF CALLAWAY - OVERVIEW OF SERVICES PER LOCATION

ACCOUNT NUMBER	ACCOUNT NAME & ADDRESS	BILL TO ADDRESS	CURRENT SERVICES	LINE NUMBERS ANALOG/ICM/AA	NRG	Mo Rate
2176521	City of Callaway Arts & Conf Center 599 Callaway Park Way	6601 Hwy 22 Callaway, FL 32404	3 MOCM LD plan 16/2 Internet 16/2 Internet (MOCM)	850.874.0035 ICM 850.215.7461 DID 850.874.0094 IAD		201.89
			2 ANALOG LINES	850.874.2782 PL 850.874.0706 F		
2176176	City of Callaway City Hall 6601 Highway 22 Callaway, FL 32404	6601 Hwy 22 Callaway, FL 32404	5Mbps PON MATRIX AA (2) 17 MATRIX #s ICM/DIDs	850.215.6209 ICM 850.215.8567 ICM 850.215.8581 ICM 850.215.8546 ICM 850.871.6000 AA 850.215.6577 DID 850.215.6621 DID 850.215.6640 DID 850.215.6653 DID 850.215.6663 DID 850.215.6684 DID 850.215.6691 DID 850.215.6694 DID 850.215.6702 DID 850.215.6721 DID 850.215.6722 DID 850.215.6727 DID 850.215.6654 DID 850.215.2418 AA 850.215.2153 DID	2900	1084.77
			CFF 3 basic lines	850.215.5813 V 850.871.2444 F 850.871.6100 CFF 850.215.3194 F		
1621284	City of Callaway Fire Dept 262 N Star Av	262 N Star Av, Panama City, FL 32404	50/5 Internet			
2176254	City of Callaway Public Fire Dept 252 N Star Av., Panama City, FL 32404	6601 Hwy 22, Callaway, FL 32404	14 MATRIX ICM/DIDs 10Mbps Fiber Fax line	850.871.5300 ICM 850.871.2753 ICM 850.215.7463 DID 850.215.7459 DID 850.215.7458 DID 850.215.7456 DID 850.215.7452 DID 850.215.7451 DID 850.215.7445 DID 850.215.7439 DID 850.215.7437 DID 850.215.7434 DID 850.215.1759 IAD 850.215.2493 DID 850.871.5564		901.28

2177595	City of Callaway Leisure Services 514 Callaway Parkway, Callaway, FL 32404	6601 Hwy 22 Callaway, FL 32404	7 MOCM ICM/DID 16/2 Internet 16/2 Internet (MOCM) Fax line	850.874.0031 ICM 850.874.9922 ICM 850.874.9944 DID 850.215.7572 DID 850.215.7615 DID 850.215.7620 DID 850.215.7635 DID 850.874.9977		205.53
2175919	City of Callaway Maintenance Shop 6623 Omoko St., Callaway, FL 32404	6601 Hwy 22 Callaway, FL 32404	7 MOCM ICM/DID 16/2 Internet 16/2 Internet (MOCM) 2 analog lines fax - voice	850.215.5902 DID 850.215.5942 DID 850.215.5944 DID 850.215.5946 DID 850.215.5947 DID 850.871.1780 ICM 850.215.1267 IAD 850.871.3993 V 850.874.0179 F	2400.00 (combined with Maint Dept)	185.49
2176195	City of Callaway Planning Dept 6603 Highway 22, Callaway, FL 32404	6601 Hwy 22, Callaway, FL 32404	4 MOCM ICM/DID 16/2 Internet 16/2 Internet (MOCM) 2 analog lines fax - voice	850.871.4672 ICM 850.215.7602 DID 850.215.7607 DID 850.215.7613 DID 850.874.8200 F 850.874.9347 V		178.03
2176233	City of Callaway Public Works 324 S Berthe Av, Callaway, FL 32404	6601 E Hwy 22, Callaway, FL 32404	10 MOCM ICM/DID 16/2 Internet 16/2 Internet (MOCM)	850.215.6032 DID 850.215.6034 DID 850.871.1033 ICM 850.215.7176 DID 850.215.7181 DID 850.215.7183 DID 850.2157198 DID 850.215.7232 DID 850.215.7234 DID 850.215.0579 DID	2400.00 (combined with Maint Dept)	365.53
	City of Callaway Public Works 324 S Berthe Av, Callaway, FL 32404		Fax	850.871.2416 F		
	City of Callaway Public Works, 6603 Highway 22, Callaway, FL 32404		3 MOCM ICM/DID 16 Internet	850.818.0405 ICM 850.215.7628 DID 850.215.7631 DID		
TBD	City of Callaway Community Center, 524 Beulah Av., Callaway, FL 32404	City of Callaway Community Center, 524 Beulah Av., Callaway, FL 32405	none	NA		48.57
					5300	3171.09

REQUEST FOR BIDS/PROPOSALS
CITY OF CALLAWAY
TELECOMMUNICATION SERVICES
BID NO.: CM2016-01

Addendum to the Bid Proposal BID NO: CM2016-01

- Should static IPs be required at any location other than outlined in the actual proposals, the cost of any additional static IPs will be billed at \$14.99 per static per location.
- WOW! Business will provide cordless phones at the Arts Conference Center based upon the Product Guidelines WOW! Business deems to be the most reliable and cost effective equipment.
- Rewiring Costs for City Hall located at 6601 E Hwy 22, Callaway, FL 32404 are \$2900.00.
- Rewiring Costs for the Public Works Dept that include **both** locations at 324 S. Berthe Av and 5523 Omoko St. are \$2400.00. Please refer to the installation charges on each of the respective proposals.
- Any existing Fiber and COAX Internet have also been included in each of the respective proposals per location in order for the phone system to be operational.
- Auto Attendants were not included in the Minimum Technical Specifications section of the bid, if Auto Attendants are needed, they would be billed at \$30.00 per Auto Attendant.
- ICMs (Virtual Numbers) were not included in the Minimum Technical Specifications section of the bid. The appropriate number of ICMs have been included in each proposal based upon the number of handsets and numbers requested in the Minimum Technical Specifications section. If additional ICMs are needed, they would be billed at \$1.25 per ICM.
- The City of Callaway currently has more handsets than requested on the Minimum Technical Specifications. Each proposal has been based upon the requested number of handsets in the Minimum Technical Specifications. Should additional handsets be

required than indicated on the Minimum Technical Specifications, the cost would be \$5.00 per phone and \$30.00 per workstation.

- The City of Callaway currently has more sidecars than requested on the Minimum Technical Specifications. Sidecars have been included to match the number the City of Callaway has a City Hall. Should additional handsets be required than indicated on the Minimum Technical Specifications, the cost would be \$2.50 per sidecar.
- The City of Callaway currently has more analog lines than requested on the Minimum Technical Specifications. Should additional analog lines be required than indicated on the Minimum Technical Specifications, the cost would be \$9.95 per line. This is cost without phones/faxes/alarms to support the line.

**AGREEMENT FOR CONTRACTOR SERVICES
TELECOMMUNICATION SERVICES
BID NO.: CM2016-01**

This Agreement made as of this 26th day of, January, 2016, by and between the **City of Callaway**, Florida - (the "CITY"), and **WOW/Knology of Florida, LLC**, authorized to do business in the State of Florida (the "CONTRACTOR"), and whose address is 235 W. 15th Street, Panama City, FL 32401, Phone: (850) 215-1310 Fax: (850) 215-0922.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Agreement is to furnish, deliver, and construct all materials, labor, and equipment and to perform all operations in accordance with the plans and specifications and as listed in the Bid Form for the **TELECOMMUNICATION SERVICES BID NO. CM2016-01**.

Services of the CONTRACTOR shall be under the general direction of the CITY MANAGER, who may designate a person to act as the CITY'S representative (hereinafter "REPRESENTATIVE") during the performance of this Agreement.

The CITY shall furnish to the CONTRACTOR up to four (4) sets of the Contract Documents for execution of the Work. Additional copies of the Contract Documents are available at the cost of reproduction.

ARTICLE 2 - SCHEDULE

The term of this contract shall be for an initial three (3) year period, with an additional three (3) one-year (1-year) periods upon written consent of CONTRACTOR and approval by the Commission of the City of Callaway, along with any cost increases at that time. Thereafter, the contract will automatically renew annually, unless termination is initiated by either party pursuant to Article 4 herein.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. The CITY shall pay to the CONTRACTOR for services satisfactorily performed, a monthly recurring charge of \$3,171.09, which includes all direct charges, indirect charges and reimbursable expenses, if any. The CITY shall pay to the CONTRACTOR non-recurring fee on a lump sum basis in the amount of \$5,300 upon satisfactory completion of the installation and rewiring work required as provided in the submitted bid.

These fees do not include taxes, fees or surcharges, which may include government imposed fees and taxes, government program fees (such as 911, LNP, TRS and universal service), and non-governmental fees and charges (such as the Broadcast TV fee, Sports Surcharge and other specific cost recovery fees, subscriber line charges, line fees, access charges and carrier service fees) and will vary depending upon the service location and the services to which the CITY subscribes. The CONTRACTOR will bill the CITY monthly.

- B. The invoices received from the CONTRACTOR pursuant to this Agreement will be reviewed and approved by the City Manager's office, indicating that services have been rendered in conformity with the Agreement, and then will be sent to the Finance Department for payment. The invoice

must specify the work performed. Ten percent (10%) of each invoiced amount will be withheld and retained by the CITY until completion of the work to the satisfaction of the CITY.

- C. In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/last billing to the CITY. This indicates that all services have been performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice shall be waived by the CONTRACTOR.
- D. CONTRACTOR acknowledges that it has reviewed the scope of work and inspected the work site and does not anticipate having any CONTRACTOR requested change orders.

ARTICLE 4 - TERMINATION

This Agreement may be terminated by the CONTRACTOR on 60 days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms hereof through no fault of the CONTRACTOR. It may also be terminated by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a termination notice and except as otherwise directed by the CITY the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 5 - PERSONNEL

The CONTRACTOR represents that it has or will secure at its own expense all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required herein under shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

ARTICLE 7 - FEDERAL AND STATE TAX

The CONTRACTOR shall be responsible for payment of its own FICA and Social Security benefits with respect to this Agreement and the personnel it employs.

ARTICLE 8 – INSURANCE & BONDS

- A. The CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance and bonds required under this paragraph and such insurance has been verified by the CITY.
- B. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida.

The CONTRACTOR shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the amount of \$1,000,000 and \$2,000,000 combined single limit for property damage and bodily injury liability covering claims which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR. CONTRACTOR shall purchase and maintain a policy or policies of commercial general liability insurance satisfactory in all respects to CITY, and casualty and extended coverage insurance. All policies shall be occurrence form policies and shall name CITY as an additional insured, with the premium thereon fully paid by CONTRACTOR on or before their due date. The general liability insurance policy shall afford minimum protection of \$1,000,000 and \$2,000,000 combined single limit coverage for bodily injury.

Required insurance shall be documented in Certificates of Insurance which provide that CITY shall be notified at least 30 days in advance of cancellation, non-renewal or adverse change. New Certificates of Insurance are to be provided to CITY at least 15 days prior to coverage renewals. City of Callaway, Florida is to be named as an additional insured entity.

If requested by CITY, CONTRACTOR shall furnish complete copies of its insurance policies, forms and endorsements.

For commercial general liability coverage, CONTRACTOR shall, at the option of CITY, provide an indication of the amount of claims, payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by CITY, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of CONTRACTOR'S obligation to fulfill the insurance requirements herein.

CONTRACTOR shall also purchase and maintain workers compensation insurance for all obligations imposed by law, with employer's liability limits of at least the statutory limit, or provide notarized affidavit of exemption listing relevant statutes. CONTRACTOR shall also purchase any other coverage required by law.

CONTRACTOR'S maintenance of the insurance policies required hereunder shall not limit or otherwise affect its liability hereunder.

- C. In the event that a performance or payment bond is required due to use of grant funds for the project, by City Commission or as otherwise required, the CONTRACTOR shall not commence work under this Agreement until it has obtained the required bonds and provided such bonds to the CITY.

ARTICLE 9 - EXCUSABLE DELAYS

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the CONTRACTOR'S control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the City's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. If failure to perform is caused by the failure of the CONTRACTOR'S subcontractor(s) and is without the fault or negligence of them, the CONTRACTOR shall not be deemed to be in default.

Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without its fault or negligence as determined by the CITY, any affected provision of this Agreement shall be revised accordingly; subject to the CITY's rights to change, terminate, or stop any or all of the work at anytime.

ARTICLE 10 - LIQUIDATED DAMAGES

Liquidated damages shall be paid to the CITY at the rate of \$200 per day for all work awarded under the contract until the work has been satisfactorily completed as provided by the Contract Documents. Sundays and Legal Holidays shall be excluded in determining days in default.

It is agreed that the amount is the per-diem rate for damage incurred by reason of failure to complete the work. The said amount is hereby agreed upon as the reasonable costs which may be accrued by the CITY after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the CONTRACTOR. The CITY shall have the right to deduct such damages from any amount due, or that may become due the CONTRACTOR, or the amount of such damages shall be due and collectable from the CONTRACTOR or Surety.

ARTICLE 11 - ARREARS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

ARTICLE 12 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY for approval and acceptance, and before being eligible for final payment of any amount due, all documents and materials prepared by and for the CITY under this Agreement.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent.

Such information and data shall be and will remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

All products generated by the CONTRACTOR for the CITY become the property of the CITY. The CITY may require submission of any electronic file version of reports, data, maps, or other submission of documentation produced for or as a result of this project in addition to paper documents.

The CITY and the CONTRACTOR shall comply with the provisions of the Florida Public Records Law.

PUBLIC RECORDS LAW. CONTRACTOR acknowledges that it is familiar with the provisions of the Public Records Law of the State of Florida.

CONTRACTOR agrees to comply with Chapter 119, Florida Statutes, and specifically per Florida Statute 119.0701, CONTRACTOR agrees to keep and maintain public records that would be required by the City of Callaway in order to perform the services provided for in this Agreement; CONTRACTOR agrees to provide public access to any required public records in the same manner as a public agency; CONTRACTOR agrees to protect exempt or confidential records from disclosure; CONTRACTOR agrees to meet public records retention requirement; and CONTRACTOR agrees that at the end of term of this Agreement, to transfer all public records to the City of Callaway and destroy any duplicate exempt or confidential public records.

All products generated by the CONTRACTOR for the CITY become the property of the CITY. The CITY may require submission of any electronic file version of reports, data, maps or other submission of documentation produced for or as a result of this Bid/Proposal in addition to paper documents.

Further, in accordance with the Public Records Laws of the State of Florida, Section 119.0701, (2013), Contractor must:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- B. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records are not disclosed except as authorized by law.
- D. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- E. If a contractor does not comply with a public records request, the public agency shall enforce the contract provision in accordance with the contract.

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE 13 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The

CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY.

The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation.

ARTICLE 14 - CONTRACT ASSIGNMENT

The CONTRACTOR shall not sublet, sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title, or interest therein, without written consent of the CITY. The CONTRACTOR shall complete the work contemplated by the terms and conditions of this Agreement in an amount equivalent to at least 50 percent (50%) of the dollar value of work to be performed under this Contract utilizing its own business or corporate entity, so that no single labor, material man, or subcontractor shall be permitted to perform more than 50% of the work contemplated by this Contract.

ARTICLE 15 - AMENDMENT

None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by a written instrument executed by the parties hereto.

ARTICLE 16 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 17 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 18 - SEVERABILITY

If any term or provision on this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 19 - CITY'S REPRESENTATIVE AND AUTHORITY

The person designated by the CITY MANAGER shall serve as the CITY'S REPRESENTATIVE and shall decide questions which may arise as to quality and acceptability of materials furnished and work performed, and shall interpret the intent of the Contract Documents with reasonable promptness.

The REPRESENTATIVE will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

The REPRESENTATIVE may assign Project Inspector(s) who shall serve to assist the REPRESENTATIVE in determining if the work performed and the materials used meet the Contract requirements. The Project Inspector shall be authorized to issue Field Orders. The Project Inspector shall be authorized to stop all or any portion of the work if in his opinion the work is not proceeding according to the requirements of the plans and specifications.

ARTICLE 20 - MODIFICATION

The CITY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the CONTRACTOR shall (1) if requested by CITY, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CITY of any estimated change in the completion date, and (3) advise the CITY in writing if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Agreement.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall issue a contract amendment or change order and the CONTRACTOR shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 21 - CONTRACT DOCUMENTS

The other documents which comprise the entire Agreement are attached hereto, made a part hereof and consist of the following:

- A. Advertisement for Bids,
- B. Special Instructions and Conditions,
- C. General Instructions and Conditions,
- D. Minimum Technical Specifications,
- E. Bid Forms
Bid Certification Form
Drug-Free Workplace Certification
Public Entity Crimes Statement,
- G. Addendums (if any),
- H. Performance & Payments Bonds (if required),
- I. Change Orders (if any).

In the event of a conflict between the terms of the above documents and the terms of this Agreement, the terms of this Agreement shall prevail.

There are no contract documents other than those listed above and there are no promises or understandings other than those stated herein.

ARTICLE 22 - VENUE

All applicable laws, regulations and ordinances of the State of Florida, Bay County and the City of Callaway will apply to consideration and award of any Bid/Proposal and the performance of the bidder/proposal pursuant thereto, and shall be governed by the laws of the State of Florida both as to intention and performance. The venue for any action arising from the award or subsequent performance

shall lie exclusively in the Circuit Court of Bay County, Florida, or the United States District Court for the Northern District of Florida, as applicable.

ARTICLE 23 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

City of Callaway
6601 East Hwy. 22
Callaway, Florida 32404
Attention: Janice L. Peters, City Clerk
Phone: (850) 215-6694
Fax: (850) 871-2224
Email: jpeters@cityofcallaway.com

With a copy to: Kevin D. Obos, Esq. City Attorney
Harrison Sale McCloy
P.O. Drawer 1579
Panama City, FL 32402
Phone: (850) 769-3434
Fax: (850) 769-6121

and if sent to the CONTRACTOR shall be mailed to:

Either party may change its address noted above by giving written notice to the other party in accordance with the requirements of the Section.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies of which one is to be delivered to the CONTRACTOR, and one to the CITY CLERK for filing in the official records.

CITY CLERK

CITY OF CALLAWAY, FLORIDA

Attest: _____
Janice L. Peters, MMC
City Clerk

By: _____
Thomas W. Abbott, Mayor

Contractor Witnesses:
(2 REQUIRED)

Contractor:

Witness: _____
Name

Signature

Business Name

By: _____
Signature

Witness: _____
Name

Signature

Print Name and Title

APPROVED AS TO FORM FOR THE RELIANCE OF THE
CITY OF CALLAWAY ONLY:

KEVIN D. OBOS, HARRISON SALE McCLOY
CITY ATTORNEY