

State of Alabama)
County of Baldwin)

CONTRACT FOR PROFESSIONAL AND CONSTRUCTION SERVICES

This Contract for **Professional and Construction Services** is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission and **Two-Way Communications, Inc., d/b/a 2-Way, Inc.**, (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas, at its regular held meeting on Tuesday, July 21, 2015, the Commission authorized staff to place a competitive bid for the Provision of Fiber Optic Network Maintenance & Locates for Baldwin County; and

Whereas, PROVIDER presented the lowest quote to the COUNTY, and therefore COUNTY wishes to retain PROVIDER, to provide those services hereinafter set out under the following terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Definitions. The following terms shall have the following meanings:

- A. COUNTY: Baldwin County, Alabama
- B. COMMISSION: Baldwin County Commission
- C. PROVIDER: Two-Way Communications, Inc.
 D/B/A 2-Way, Inc.

II. Obligations Generally. The COUNTY hereby employs, and the PROVIDER agrees to perform for the COUNTY, those professional and construction services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract, and shall have the effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.

VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the

PROVIDER does not in any manner act on behalf of COUNTY and the creation of such a relationship is prohibited and void.

X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: Two-Way Communications, Inc.
D/B/A 2-Way, Inc.
1704 Justin Road
Metairie, LA 70001-6260

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square
Suite 12
Bay Minette, AL 36507

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally-qualified **contractor**. The general scope of work for the services shall include all the terms and Conditions of **“Competitive Bid #WG15-23”**, the same being expressly incorporated herein by reference, and without limitation will encompass:

“All provision and conditions and/or specifications listed/stated in Competitive Bid #WG15-23 named, Provision of Fiber Optic Network- Maintenance & Locates for the Baldwin County Commission”.

This project consists of the annual maintenance and performing of locates of the Baldwin County Fiber Network. The Baldwin County Fiber Network consists of approximately 67 route miles of armored single mode enhanced fiber constructed using underground buried ducts. The cable is in varying fiber count from 24 - 192 strands, with the majority of the major runs being 96 count. There also exists throughout most of the network a spare empty duct for maintenance and future system expansion. The network links multiple County facilities in Bay Minette, Loxley, Robertsdale, Silverhill, Fairhope, Magnolia Springs, Foley and Lottie. The **attached map (page 23)** gives a high level general location of the Baldwin County Fiber Network.

The General Scope of Work includes services for locating the underground fiber optic cable network and maintaining structural integrity of said network including emergency call-outs and repairs, **AND** maintenance including regular inspections of the outside plant to ensure no physical problems exist (e.g. Ensuring handhole covers are in place and not damaged, Inspection for erosion or washout problems that may lead to fiber damage, etc.); proper marker maintenance to include but not limited to keeping marker post visible, replacement of damaged or missing markers and installation of additional markers found to be needed to properly protect the County’s fiber (County to provide marker post);

repairing damaged handholes; implementing a plan to provide rodent and pest control.

Contractor will provide marker flags to mark locates called in by Alabama One Call. The marker shall read **“Baldwin County Fiber Network 251-580-1915” and be orange in color.**

Contractor will be required to locate the network in accordance with Alabama Law, including but not limited to Act 94-487, and in accordance with Alabama One Call Operating Procedures. The Baldwin County Fiber Network is currently registered with Alabama One Call. The Alabama One Call locate requests received on the Baldwin County Fiber Network numbered approximately 1660 during the period of June 1, 2014, through May 31, 2015. Contractor will be required to provide an E-mail address that the locate requests can be forwarded to and must also provide E-mail confirmation back to the County on receipt of the locate request within two (2) hours of receipt of locate request. Contractor will be responsible for damages to the network resulting from failure to properly or promptly locate the network under Alabama Law and Alabama One Call Operating Procedures.

Contractor will respond to emergency call-outs to be on-site within 4 hours with appropriate and sufficient personnel, equipment, & material to affect repair and will work diligently to effect repairs as quickly as possible. Contractor will be responsible to keep on hand appropriate and sufficient common materials required to make emergency repairs. County and Contractor will work together to determine specialized materials (specific to Baldwin County Fiber Network specifications) that may need to be kept on hand to ensure timely repairs. Contractor will provide and adhere to an estimate on repair jobs when possible and will inform County of issues when it is not possible to estimate damage. The rate schedule awarded as part of the Bid will be in effect for emergency call-outs and repairs. Contractor will provide the County with details and expert advice to assist the County in pursuing reimbursement from the party responsible for the damage.

- A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc., as requested. Additionally, PROVIDER will meet with COUNTY as needed as requested.
- B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

XVII. General Responsibilities of the COUNTY.

- A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.
- B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set out below.

XVIII. Termination of Services. The COUNTY may terminate this contract, with or without cause or reason, by giving thirty (30) days written notice of such to the PROVIDER. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

XX. Direct Expenses. Compensation to PROVIDER for work shall be **\$ 4,583.33 per month plus cost listed on the Rate Schedule for Emergency Call-outs and Repairs as shown on Attachment A.** Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services.

XXI. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective for twelve (12) months and commence immediately upon the same date as full execution, with an option to issue two (2) twelve (12) month contracts, or extend the first contract until such time that a new contract can be bid and

awarded. And additional contract or extensions will be at the same prices, terms and conditions. Any successive contract(s) must have the written approval of both the County and the Provider no later than thirty (30) days prior to the expiration of the original contract. [Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend and hold County, and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by Contractor. Contractor shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this Contract.

XXV. Number of Originals. This Contract shall be executed with three (3) originals, each of which are equally valid as an original.

XXVI: Governing Law: This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVII: Insurance: Prior to performing services pursuant to this Contract, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees

and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold Provider in material default and pursue any and all remedies available.

XXVIII: Surety: As a material inducement for the County to enter this Agreement, any and all bond and/or surety guarantees required by the County in reference to the Project shall be in a form acceptable to the County and shall, without limitation, meet the following requirements:

(a) Acceptance of Surety. The bond and/or surety document must be reviewed by, and be acceptable to, County staff and approved by the County Commission. In the event that such document is not in an acceptable form at any time prior to or during the effectiveness of this Contract, the services and/or work described in this Contract shall either not commence or immediately cease, depending on the situation. Any project delay that is attributable to the County's acceptance, or non-acceptance, of the bond and/or surety document form shall in no way be consider as a delay caused by the County, and the Contractor and/or Provider waives all rights to claim that any such delay was the fault of the County.

(b) Value of Surety. The bond and/or surety guarantee shall be of an amount equal to or greater than 100 percent of the total cost identified in the bid response.

(c) Term of Surety. Any bond and/or surety guarantees required by the County must be valid at all times during the life of this Contract. Notwithstanding anything written or implied herein to the contrary, in no event shall the bond and/or surety document lapse, terminate, expire, or otherwise become invalid prior to the County, or the County's authorized agent, providing a written Notice to the Provider/Contractor that the Project is in fact completed in all respects. Said Notice from the County or its authorized agent shall not be provided until the County, in its sole discretion, is satisfied that the Project is complete in all respects.

(d) Scope of the Surety. The terms and provisions of any bond and/or surety

guarantee provided as part of this Project shall in all respects, without limitation, be consistent and in agreement with, the provisions of this Contract. In the event that the bond and/or surety guarantee is in conflict with this Contract, this Contract shall govern. Neither this section nor this provision limits the duties of the Provider/Contractor to satisfy all of the requirements in this Contract.

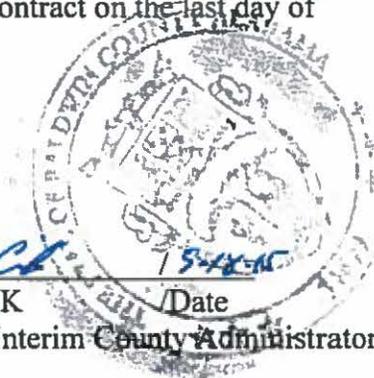
IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the COUNTY as written below.

COUNTY

Charles F. Gruber 19-18-15
CHARLES F. GRUBER, Chairman /Date

ATTEST:

Ronald J. Cink /Date
RONALD J. CINK
Budget Director/Interim County Administrator



State of Alabama)

County of Baldwin)

I, Monica E Taylor, a Notary Public in and for said County, in said State, hereby certify that, Charles F. Gruber, whose name as Chairman of Baldwin County Commission, and Ronald J. Cink, whose name as Budget Director/Interim County Administrator, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional and Construction Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

GIVEN under my hand and seal on this the 17th day of September, 2015.



Monica E Taylor
Notary Public
My Commission Expires 09/05/2016

SIGNATURE PAGE AND NOTARY PAGE TO FOLLOW

PROVIDER:

Two-Way Communications, Inc., d/b/a 2-Way, Inc.

LESTER L. BOYHEM, JR.
By [Signature] /Date
Its SEC/TRES 9/10/2015

STATE OF
~~State of Alabama~~ LOUISIANA
PARISH OF JEFFERSON
~~County of Baldwin~~

I, MICHAEL OHARA JACKSON, Notary Public in and for said County and State, hereby certify that LESTER L. BOYHEM, JR. as SEC/TRES of Two-Way Communications, Inc., d/b/a 2-Way, Inc., whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he executed the same voluntarily on the day the same bears date for and as an act of said Two-Way Communications, Inc., d/b/a 2-Way, Inc.

GIVEN under my hand and seal on this the 10TH day of SEPTEMBER, 2015.

[Signature]
Notary Public
My Commission Expires



MICHAEL OHARA JACKSON
NOTARY PUBLIC
PARISH OF ST. TAMMANY
LOUISIANA
NOTARY ID NO. 128918
MY COMMISSION IS FOR LIFE



"ATTACHMENT A"

COMPETITIVE BID #WG15-23 Award Listing Maintenance & Locates for the Fiber Optic Network

BIDDER: Two-Way Communications, Inc. d/b/a 2-Way, Inc.

Cost of Performing Locates & General Maintenance:

Monthly Cost \$4,583.33 x 12 = \$54,999.96 Total of 12 month cost

Rate Schedule for Emergency Call-outs and Repairs:

- 1) Splicer \$150.00 per hour plus \$25.00 per splice
(Includes Personnel, Truck and Equipment)
- 2) Backhoe \$350.00 per hour
(Includes Operator, other Personnel required, and Equipment)
- 3) Materials at cost plus 15%

Baldwin County Fiber Network

