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 **James H. Adams & Son Construction Co., Inc.,** hereinafter referred to as "CONTRACTOR").

The bid specifications are fully set forth as part of this contract.

WITNESSETH:

Whereas, the Baldwin County Commission recognizes that during tropical storms, hurricanes and other coastal flooding events, the roadways along the Fort Morgan Peninsula become covered with water;

Whereas, this flooding allows natural sand material and other debris to be deposited on Baldwin County Right-of-Ways and County owned public lands;

Whereas, this deposition of sand on Baldwin County Right-of-Ways and County owned public lands causes safety problems for the residents of Baldwin County as well as the traveling public; and

Whereas, the Baldwin County Commission has authorized staff to solicit bids for an Annual Bid for the removal of sand from the Baldwin County Right-of-Ways and County Owned public lands, clean the sand, and deposit the sand on the beach and back on Baldwin County Right-of-Ways.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, CONTRACTOR 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. CONTRACTOR: James H. Adams & Son Construction Co., Inc.

D. DELETERIOUS MATERIAL: Material other than natural beach sand, including but not limited to rocks, asphalt, concrete, plastics, metal, wood and other building materials;

E. OBJECTIONABLE OBJECTS: Any material that is not suitable to be in a roadbed, including but not limited to wood, vegetation, plastics, metal or other organic building materials

II. Obligations Generally. The COUNTY hereby retains, and the CONTRACTOR agrees to perform for the COUNTY, those construction services as hereinafter set forth. This document shall serve as the binding contract for the services of CONTRACTOR. CONTRACTOR shall be on standby upon full execution of this contract. CONTRACTOR shall immediately commence performance of the services outlined herein upon issuance of a Notice to Proceed by the Baldwin County Commission. 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 CONTRACTOR represents and warrants to the COUNTY that it and any and all agents, assigns and subcontractors retained by it to perform work required by this contract possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the 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. CONTRACTOR represents and warrants that CONTRACTOR is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that CONTRACTOR 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. CONTRACTOR shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.

VIII. Independent Contractor. CONTRACTOR acknowledges that it is an independent contractor, and CONTRACTOR shall at all times remain as such in performing the services under this Contract. CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR is not entitled to unemployment insurance benefits, and CONTRACTOR 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 CONTRACTOR or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR 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:

CONTRACTOR: James H. Adams & Son Construction Co., Inc.
P. O. Box 11306
Chickasaw, AL 36671
ATTN: James H. Adams

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

XVI. Services to be Rendered. CONTRACTOR is retained by the COUNTY as a licensed and qualified contractor. The general scope of work for the services will encompass the following activities and shall include all the terms and conditions of **Competitive Bid #WG16-25,** the same being expressly incorporated herein by reference, and without limitations will encompass:

1) Removal of **all** excess sand deposited on Baldwin County rights-of-ways, and County owned public land, by either natural storm events or by adjacent property owners following natural storm events, depositing the said sand back on other washed out areas on Baldwin County rights-of-way as directed by the Baldwin County Engineer. All sand deposited on right-of-ways shall be free of objectionable objects as determined by the Baldwin County Engineer. Objectionable objects are defined as any material that is not suitable to be in a roadbed, including but not limited to wood, vegetation, plastics, metal or other organic building materials.

2) Removal of **all** excess sand deposited on Baldwin County rights-of-ways, and County owned public land, by either natural storm events or by adjacent property owners following natural storm events, sifting the said sand to remove all deleterious materials and depositing the sand back on the beaches as directed by the Baldwin County Engineer, and spreading the sand as directed by the Baldwin County Engineer. All sand deposited on the beach shall be sifted and be free from excess deleterious materials. Deleterious material is defined as material other than natural beach sand, including but not limited to rocks, asphalt, concrete, plastics, metal, wood and other building materials. All sand to be placed back on the beaches must be sifted through a sieve with openings no larger than 5/8". All areas where sand is to be deposited on beach shall be cleaned to remove all deleterious material as directed by the Baldwin County Engineer immediately prior to deposition of cleaned sand. Upon completion, all roads shall be swept from edge of pavement to edge of pavement to clear off any excess sand on roads as part of the final cleanup operation

3) Disposal of all deleterious materials removed from said sand by the sifting operation, at a Baldwin County Solid Waste facility. The CONTRACTOR will be responsible for the payment of all applicable tipping fees.

4) Disposal of all objectionable objects or large deleterious material (i.e. C&D materials and vegetative debris generated by either natural storm event or by adjacent property owners following natural storm event) removed prior to or during the sand sifting operation, at a Baldwin County Solid Waste facility. The CONTRACTOR will be responsible for the payment of all applicable tipping fees.

5) Repair any driveway damaged from the natural storm event or from the sand sifting operation with gravel as directed by the Baldwin County Engineer per ALDOT Standard Specifications for Highway Construction Section 430 B.

6) Installation of an inspection tower meeting all OSHA regulations shall be erected by the contractor and paid for under appropriate line item, if required by the County. The platform shall be large enough for 3 inspectors and tall enough to adequately see inside the bed of trucks.

The CONTRACTOR is required to remove all excess sand on all Baldwin County Rights-of-Ways and County owned public Lands, INCLUDING SAND THAT IS MIXED WITH C&D (CONSTUCTION AND DEMOLITION) AND VEGETATIVE DEBRIS.

If the existing rights-of-ways or county owned public land in the Ft. Morgan are not adequate to perform the sifting operation, it is the responsibility of the CONTRACTOR to acquire temporary right-of-entry permission to use other private property for this operation.

In addition, all Baldwin County rights-of-ways, and County owned public land, must be restored to be relatively uniform manner and to allow safe vehicular travel as determined by the Baldwin County Engineer.

Any large amounts of aggregate materials (crushed limestone base, asphalt, etc) separated from sifting operations will be loaded by CONTRACTOR and hauled and spread on County rights-of-ways as directed by the Baldwin County Engineer.

All work is to be completed by the Contractor as efficiently and effectively as possible and under the direction of the Baldwin County Highway Department, with concurrence by the U.S. Fish and Wildlife Service, State Lands and CORPs of Engineers. The Contractor shall employ enough forces and equipment to complete the project in a timely manner within the agreed time frame.

CONTRACTOR will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, CONTRACTOR will meet with COUNTY as needed or requested.

CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

CONTRACTOR represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. General Responsibilities of the COUNTY.

A. The COUNTY, by and through its County Engineer, shall provide reasonable notice to CONTRACTOR whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of CONTRACTOR's services hereunder or any defect or nonconformance in the work of CONTRACTOR.

B. The COUNTY shall pay to CONTRACTOR 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, and with or without hearing, by giving ten (10) days written notice of such to the other party. Upon receipt of such notices, CONTRACTOR shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay CONTRACTOR 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 CONTRACTOR shall be the full compensation for all work performed by CONTRACTOR under this Contract. Any and all additional expenditures or expenses of CONTRACTOR, not listed in full within this Contract, shall not be considered as a part of this Agreement and shall not be demanded by CONTRACTOR or paid by COUNTY.

XX. Direct Expenses. Compensation to CONTRACTOR for work shall be paid as listed 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. CONTRACTOR 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 CONTRACTOR.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the CONTRACTOR. 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 and commence immediately upon the same date as its full execution, and the same shall terminate upon both the expiration of twenty-four (24) months or upon a written notification thereof received by either party within the required thirty (30) day period. This Contract may be extended for up one (1) additional twelve (12) month period, with the written consent of both parties. 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. Contractor shall indemnify, defend and hold the 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 the 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 additional insured. This indemnification shall survive the expiration or termination of this Contract.

XXV. Number of Originals. This Contract shall be executed with three 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.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this contract on the last day of execution by the COUNTY as written below.

COUNTY

_____ / 7.5.16
TUCKER DORSEY, Chairman / Date

ATTEST:

_____ / 7-5-16
RONALD J. CINK, /Date
County Administrator /Budget Director

State of Alabama)

County of Baldwin)

I, Keri Green, a Notary Public in and for said County, in said State, hereby certify that, Tucker Dorsey, whose name as Chairman of Baldwin County Commission, and Ronald J. Cink, whose name as County Administrator/Budget Director, 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 officer and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

Given under my hand and official seal, this the day of July 5, 2016.

_____
Notary Public
My Commission Expires 11-23-19

SIGNATURE AND NOTARY PAGE TO FOLLOW

CONTRACTOR:

James H. Adams & Son Construction Co., Inc.

James H Adams 6/24/16

By JAMES H. ADAMS /Date
Its PRESIDENT

State of Alabama)

County of Baldwin)

I, Sharon Macon French, a Notary Public in and for said County and State, hereby certify that James H Adams whose name as Pres of James H Adams & Son Const Co Inc, 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/she executed the same voluntarily on the day the same bears date for and as an act of said_____.

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GIVEN under my hand and seal on this the 24th day of June, 2016.

Notary Public Sharon Macon French
My Commission Expires

My Commission Expires Feb. 26, 2019

"ATTACHMENT A"

III. PROPOSAL FOR BID ANNUAL SAND REMOVAL/SIFTING/ DEPOSITION - FORT MORGAN PENINSULA, BID #WG16-25

Date: 5/10/16

Proposal of JAMES H. ADAMS & SON CONSTRUCTION, INC (Company Name)

Address 535 HWY 43 - CHICKASAW, ALA 36611

Company Representative Name (Print or Type) JAMES H. ADAMS

Position PRESIDENT Phone 251-456-1909 Fax 456-9252

Contractor's License Number 12007
(License Issued by the Alabama State Licensing Board for General Contractors)

Base Bid #1.

Bidder shall provide unit price bid to remove **all** excess sand deposited on Baldwin County rights-of-ways, and County owned public land, by either natural storm events or by adjacent property owners following natural storm events, depositing the said sand back on other washed out areas on Baldwin County rights-of-way as directed by the Baldwin County Engineer. All sand deposited on right-of-ways shall be free of objectionable objects as determined by the Baldwin County Engineer.

$ 3.25 /cy

Base Bid #2.

Bidder shall provide unit price bid to remove **all** excess sand deposited on Baldwin County rights-of-ways, and County owned public land, by either natural storm events or by adjacent property owners following natural storm events, sifting the said sand to remove all deleterious materials and depositing the sand back on the beaches as directed by the Baldwin County Engineer, and spreading the sand as directed by the Baldwin County Engineer. All sand deposited on the beach shall be sifted and be free from excess deleterious materials. All sand to be placed back on the beaches must be sifted through a sieve with openings no larger than 5/8". All areas where sand is to be deposited on beach shall be cleaned to remove all deleterious material as directed by the Baldwin County Engineer immediately prior to deposition of cleaned sand. Upon completion, all roads shall be swept from edge of pavement to edge of pavement to clear off any excess sand on roads as part of the final cleanup operation.

$ 6.75 /cy

Base Bid #3.

Bidder shall provide unit price bid to dispose of all deleterious materials removed from said sand by the sifting operation, at a Baldwin County Solid Waste facility. The CONTRACTOR(S) will be responsible for the payment of all applicable tipping fees.

$ 100.00 /ton

Base Bid #4.

Bidder shall provide unit price bid to dispose of all objectionable objects or large deleterious material (i.e. C&D materials and vegetative debris generated by either natural storm event or by adjacent property owners following natural storm event) removed prior to or during the sand sifting operation, at a Baldwin County Solid Waste facility. The CONTRACTOR(S) will be responsible for the payment of all applicable tipping fees.

$ 100.00 /ton

Base Bid #5.

Bidder shall provide unit price bid to repair any driveway damaged from the natural storm event or from the sand sifting operation with gravel as directed by the Baldwin County Engineer per ALDOT Standard Specifications for Highway Construction Section 430 B.

$ 100.00 /ton

Base Bid #6.

Bidder shall provide unit price bid to install an inspection tower meeting all OSHA regulations with platform large enough for 3 inspectors and tall enough to adequately see inside bed of trucks.

$ 2000.00 /each