COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. FRANK BURT, JR.
2. CHRIS ELLIOTT
3. J. TUCKER DORSEY
4. CHARLES F. GRUBER

July 5, 2016

Mr. Jim McNaughton
Environmental Business Services
5016 West Concord Road
Brentwood, Tennessee 37027

RE: Baldwin County Solid Waste Standard On-Call Contracts for Engineering and Related Services

Dear Mr. McNaughton:

Please find enclosed a **fully executed <u>original</u>** *Standard On-Call Contract* approved during the May 3, 2016, Baldwin County Commission meeting for engineering and related services that are estimated less than or equal to $100,000.00 and budgeted in the current fiscal year budget with your firm.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-8502 or Terri Graham, Development and Environmental Director, at (251) 972-6878.

Sincerely,

TUCKER DORSEY, Chairman
Baldwin County Commission

TD/met Item BF2

cc: Terri Graham (Original Agreement)

ENCLOSURE

(BALDWIN COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER M/F)

State of Alabama)
County of Baldwin)

MASTER ON CALL CONTRACT FOR PROFESSIONAL SERVICES

This Master On Call Contract for Professional Services (hereinafter "Contract") is made and entered into by and between the County of Baldwin (hereinafter "COUNTY") acting by and through its governing body, the Baldwin County Commission (hereinafter "COMMISSION"), and Environmental Business Services (hereinafter "PROVIDER").

WITNESSETH:

Whereas, COUNTY, pursuant to authority granted under Alabama law, is continuously involved in numerous projects relating to the design, construction, improvement, monitoring, maintenance, and/or repair of solid waste and environmental systems throughout Baldwin County, Alabama; and

Whereas, PROVIDER is a company qualified to do business in state of Alabama, staffed with licensed professional who have specialized expertise and training in the provision of services, including, without limitation, survey, design, geotechnical and material testing, construction engineering, inspection, monitoring, regulatory and compliance consulting, maintenance, improvement and/or repair, relating to solid waste and environmental systems ("Services"); and

Whereas, by Baldwin County Policy #9.10, the Baldwin County Commission has delegated to the Baldwin County Development and Environmental Director the authority to select and retain the services of qualified professional engineering firms to provide said services in relation to any COUNTY solid waste or environmental project, if the expense of PROVIDER's services is less than one-hundred thousand dollars ($100,000.00), and if such services are otherwise subject to a global contract between COUNTY and the selected firm which sets out the governing terms and conditions of the parties' relationship; and

Whereas, the parties now wish to enter into such a global contract, to wit this Master On Call Contract for Professional Services, thereby authorizing the Baldwin County Development and Environmental Director to retain the services of PROVIDER from time to time, by and through separate scope of work agreements, as defined herein, under and subject to this Contract, in relation to County projects necessitating Services only as to such projects for which the expense for PROVIDER's services is less than one-hundred thousand dollars ($100,000.00).

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: Environmental Business Services

D. SCOPE OF WORK AGREEMENT: Unless otherwise agreed between PROVIDER and Development and Environmental Director in writing, "scope of work agreement" shall mean and include the cumulative exchange of communications and acknowledgments between PROVIDER and Development and Environmental Director by which they set out and agree to the terms, conditions and details of Services for any discrete, independent project, and shall for each such project include a scope of work prepared by Development and Environmental Director, PROVIDER's acceptance thereof together with a fee proposal, and Development and Environmental Director's acceptance thereof by way of a notice to proceed.

II. Obligations Generally. The COUNTY hereby retains PROVIDER to provide, and the PROVIDER agrees to perform for the COUNTY, said Services as the Baldwin County Development and Environmental Director may from time to time authorize and retain by separate, independent scope of work agreements issued pursuant and subject to this Contract. Each said scope of work agreement shall be subject to this Contract and shall be governed in all respects by the terms and conditions herein. Each respective scope of work agreement, together with this document, shall serve as an independent, binding contract. PROVIDER shall immediately commence performance of the Services outlined herein upon full execution of this Contract and as directed in respective scope of work agreements. All work shall be commenced and completed in a timely manner as, and at the times, herein set out and as set out in each respective scope of work agreement.

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 Constitution of Alabama 1901, as the same may be amended from time to time. The parties acknowledge that the COUNTY reserves the right to enter into agreements with other providers as deemed necessary by the COUNTY.

VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently registered, certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein and as may be authorized in any and all said scope of work agreements, and that PROVIDER shall renew, maintain and otherwise ensure that all such registrations, certifications, licenses, and permits are current and valid, without interruption, for and through completion of such services.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws, rules 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 and respective scope of work agreements. 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 or any other benefits offered by the COUNTY, 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 and respective scope of work agreements.

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, together with respective scope of work agreements, represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract, and respective scope of work agreements, may be amended only by written instrument signed by authorized 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 or any respective scope of work agreement 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. Neither this Contract nor any respective scope of work agreement, nor any interest therein, shall 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. Without limitation, the parties acknowledge and agree that PROVIDER shall not assign, subcontract or otherwise delegate any part, discipline or aspect of PROVIDER's obligations hereunder, or in any respective scope of work agreement, without obtaining COUNTY's prior written approval, including COUNTY's approval of the entity to which such assignment, subcontract or delegation would be made.

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 or respective scope of work agreements, 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. PROVIDER agrees to provide any releases or further assurances required by the COUNTY to evidence the rights granted by this section XIV.

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: Environmental Business Services
Attn: Jim McNaughton
5016 West Concord Road
Brentwood, TN 37027

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 service firm. The general scope of work for the Services shall include those set out in each scope of work agreement as the same may be made from time to time during the term of this Contract by PROVIDER and the Baldwin County Development and Environmental Director. Each such scope of work agreement made hereunder shall be subject to this Contract. The parties acknowledge and agree that each such scope of work agreement shall be deemed and treated as a separate and independent agreement between the parties, subject to the terms and conditions of this Contract.

PROVIDER will provide ongoing communications with COUNTY regarding Services, including updates, emails, etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract and respective scope of work agreements. Failure to meet project schedules, scopes, standards and any other related project criteria will be considered for future use of this Contract. Failure to adhere to the terms and conditions of this Contract shall be considered for future use and extension of this Contract. Errors and omissions to the project plans, specifications, estimates and all other project related documents shall be considered for future use and extension of this Contract.

PROVIDER represents and warrants that its Services shall be performed within the limits, standards and requirements 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 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 compensation subject to the terms set out herein and in accordance with the respective scope of work agreements.

C. The COUNTY shall make available to PROVIDER all information, materials and accommodations within COUNTY's control, as reasonably necessary to PROVIDER's performance hereunder.

XVIII. Termination of Services. The COUNTY or PROVIDER may terminate this Contract, or any and all scope of work agreements executed hereunder, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its respective work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered under the respective scope of work agreement, and the COUNTY shall pay for any expenses

deemed by COUNTY to be a reimbursable expense incurred pursuant to such scope of work agreement prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be as provided herein and each respective scope of work agreement, and such compensation shall be the full compensation for all work performed by PROVIDER under this Contract and such respective scope of work agreement. Any and all additional expenditures or expenses of PROVIDER not listed in full within this Contract or respective scope of work agreement shall not be considered as a part of this Contract or scope of work agreement, and shall not be demanded by PROVIDER or paid by COUNTY. Provided, however, that penalties and/or incentives may be provided for in respective scope of work agreements at the discretion of the Development and Environmental Director, and provided further that any such incentive shall not cause total compensation to PROVIDER under any scope of work agreement to exceed the $100,000.00 limitation imposed pursuant to Baldwin County Policy #9.10 as aforesaid.

XX. Direct Expenses. 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 ninety (90) 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 and commence immediately upon the same date as its full execution, and the same shall terminate upon the earlier of (i) the expiration of thirty six (36) months or (ii) a written notification of termination received by either party within the required thirty (30) day period. Provided, however, that any scope of work agreement properly executed within the term of this Contract shall remain valid and effective pursuant to the terms of such scope of work agreement if the time for performance of such scope of work agreement does not exceed thirty six (36) months and so long as

such scope of work agreement is not otherwise terminated by either party as provided for 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. 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. PROVIDER shall indemnify and hold the COUNTY and its commissioners, officers, directors, employees and representatives (collectively herein, "COUNTY") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs and expenses including, without limitation, attorneys' fees and costs, for any and all personal injury (including death), property damage or any other damage or injury of any kind or nature whatsoever, incurred by, asserted against, or imposed upon COUNTY, arising from or related to the acts, errors or omission of the PROVIDER arising from or related to this Contract, the respective scope of work agreements, or the services to be provided thereunder. This indemnification shall survive the termination or expiration of this Contract. Further, PROVIDER shall have and maintain throughout the term of this Contract, and all such scope of work agreements, adequate professional liability insurance and general liability insurance in such amounts as may be determined by the Development and Environmental Director. Except as otherwise required or modified in writing by the Development and Environmental Director or in a scope of work agreement, the minimum insurance requirements shall be as set forth in the attached Exhibit A.

XXV. Governing Law. This Contract and respective scope of work agreements, in all respects, including, without limitation, 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.

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

IN WITNESS WHEREOF, the parties hereto, 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

J. TUCKER DORSEY /Date
Chairman

ATTEST:

7-5-16

RON CINK /Date
County Administrator

State of Alabama)
County of Baldwin)

I, Keri Green, Notary Public in and for said County, in said State, hereby certify that, J. Tucker Dorsey, whose name as Chairman of the Baldwin County Commission, and Ron Cink, whose name as County Administrator of the Baldwin County Commission, are known to me, acknowledged before me on this day that, being informed of the contents of this Contract, they, as such officers and with full authority, executed same voluntarily on behalf of said Commission.

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

Keri Green

Notary Public, Baldwin County, Alabama
My Commission Expires: 11-23-19

PROVIDER

Environmental Business Services (Cooper & Associates, LLC)

BY: Gerald McNaughton / 6/3/2016
AS ITS: President /Date

State of ~~xxxxxx~~) Tennessee
County of ~~xxxxxx~~) Williamson

I, Sean T. Cramer, Notary Public in and for said County, in said State, hereby certify that, Gerald McNaughton, whose name as President of Cooper & Associates, LLC, a limited liability co., is known to me, acknowledged before me on this day that, being informed of the contents of this Contract, he/she, as such officer and with full authority, executed same voluntarily on behalf of said limited liability company.

Given under my hand and official seal, this the 3rd day of June, 2016.

Sean Cramer
Notary Public, TN County, Williamson
My Commission Expires: 6/3/19

SEAN T. CRAMER
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY
My Commission Expires June 03, 2019

Exhibit "A"

Insurance Requirements

The PROVIDER, at its sole expense, shall obtain and maintain in full force the following insurance to protect the PROVIDER and the Baldwin County Commission, Baldwin County, Alabama at limits and coverages specified below. These limits and coverages specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the PROVIDER. The requirements shown for "large projects" are for those projects whose cost are greater than or equal to $50,000. The requirements shown for "small projects" are for those with cost less than $50,000.

All insurance will be provided by insurers licensed to conduct business in the State of Alabama and shall have a minimum A.M. Best rating of A- VII and must be acceptable to the Baldwin County Commission, Baldwin County, Alabama. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the Baldwin County Commission, Baldwin County, Alabama, for prior approval.

No work shall be performed until proof of compliance with the insurance requirements has been received by the Baldwin County Commission.

(a) Worker's Compensation and Employers Liability

Part One: Statutory Benefits as required by the State of Alabama

Part Two: Employers Liability

	Large Projects	Small Projects
Each Accident	$1,000,000	$500,000
Each Employee	$1,000,000	$500,000
Policy Limit	$1,000,000	$500,000

	Large Projects	Small Projects
Bodily Injury by accident (Each Accident)	$1,000,000	$500,000
Bodily Injury by disease (Aggregate)	$1,000,000	$500,000

(b) Commercial General Liability

Coverage on an Occurrence form with a combined single limit (Bodily Injury and Property Damage combined) as follows:

	Large Projects	Small Projects
Each Occurrence	$1,000,000	$500,000
Personal and Advertising Injury	$1,000,000	$500,000
Products/completed Operation Aggregate	$2,000,000	$500,000
General Aggregate	$2,000,000	$500,000

Coverage to include:

- •Premises and operations
- •Personal Injury and Advertising Injury
- •Independent Consultants
- •Blanket Contractual Liability
- •Broad Form Property Damage

The PROVIDER shall name the Baldwin County Commission, its employees and agents as additional insured for claims arising out of the PROVIDER and/or Sub-Provider's work. The naming of the additional insured does not obligate the additional insured to pay any premiums due.

Aggregate limits to be on a "per project" basis OR an Owners and PROVIDER's Protective Liability Policy shall be provided in the name of Baldwin County Commission, Baldwin County, Alabama, the PROVIDER and Sub-Providers. Limits to be the same as above Commercial General Liability.

(c) Automobile Liability

Covering all Owned, Non-Owned, and Hired vehicles with a Combined single limit (bodily injury and property damage combined) of $1,000,000 each accident for **large** projects and $500,000 for **small** projects. The policy shall name Baldwin County Commission, Baldwin County, Alabama as an Additional Insured.

Professional Liability

Coverage for professional liability shall be in amount of $1,000,000.00 for all large projects which are greater than $50,000.00. For Smaller projects which are projects less than $50,000.00, the PROVIDER shall provide $250,000.00 of professional liability coverage.

Waiver of Subrogation

The Workers Compensation Policy shall contain a Waiver of Subrogation in favor of the Baldwin County Commission, Baldwin County, Alabama.

Certificate of Insurance

A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the Baldwin County Commission, Baldwin County, Alabama PRIOR to commencement of any work on the contract. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation to the Baldwin County Commission, Baldwin County, Alabama.