ITEM VIII

CONTRACT FOR CONSTRUCTION SERVICES

State of Alabama

) County of
Baldwin

)

This Contract for Construction Services (hereinafter referred to as "Contract") is made and entered into by and between the County of Baldwin, acting by and through its governing body, the Baldwin County Commission (hereinafter referred to as "COUNTY"), and John G. Walton Construction Co., Inc., (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas, the Baldwin County Commission at its March 1, 2016 meeting awarded the bid for the resurfacing of several Baldwin County road (Project Numbers: Resurfacing Projects FY 2016: Group 3 to **John G. Walton Construction Co., Inc.**, in the amount of two million one hundred thirty five thousand four hundred seventy one dollars and forty cents ($2,135,471.40) Alternate 3 with a completion time of **60 Working days**;

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. Obligations Generally. The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those public works 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. Time is of the essence for all provisions of this Contract.

II. 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.

III. 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.

IV. 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.

V. 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.

VI. Legal Compliance. The PROVIDER shall at all times comply with all applicable federal, state, local and municipal laws and regulations.

VII. 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.

VIII. 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.

IX. 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.

X. 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 agreement may be amended only by written instrument signed by all parties.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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: John G. Walton Cnstruction Co., Inc.
PO Box 81222
Mobile, AL 36689

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

XV. 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 being expressly incorporated herein by reference, and without limitation will encompass:

The work consists of properly performing the following tasks in accordance with the plans, specifications, regulations, codes and good engineering and construction practices:

FOR CONSTRUCTION BALDWIN COUNTY RESURFACING PROJECTS 2016: GROUP # 3;

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 or 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.

C. PROVIDER 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.

ATTACHMENTS:

The exhibits and/or attachments listed below are specifically included as a necessary part of this Contract, and the same shall not be complete without such items, to wit:

- **Construction Plans for BALDWIN COUNTY RESURFACING PROJECTS 2016: GROUP # 3**
- **Scope of Work**
- **Map**
- **Baldwin County Asphalt Specification WG15-39**

County and Provider/Contractor jointly shall cause such items as listed above to contain dates, signatures of the parties with authorization to make such signatures, and sufficient marks and references back to this Contract noting their inclusion and attachment hereto. In any event of a conflict between this document and the attachments referenced above, this document shall govern.

XVI. 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 subject to the terms set out below.

XVII. Termination of Services. The COUNTY may terminate this Contract, with or without cause or reason, by giving fifteen (15) 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.

XVIII. 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.

XIX. Direct Expenses. Compensation to PROVIDER for work shall be paid on contract unit prices for work completed by Provider upon approval of the County Engineer. 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

XX. 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.

XXI. Effective Dates. This Contract shall be effective and commence immediately upon the same date as its full execution. The Contract shall have sixty (60) working days after the notification to proceed to complete the work. The contract shall terminate upon either the expiration of no more than one hundred twenty (120) days after the notification to proceed is given or upon a written notification thereof received by either party within the required fifteen (15) day period, unless extended by the County. [Nothing herein stated shall prohibit the County from otherwise terminating this Contract according to the provisions herein.]

XXII. 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.

XXIII. Indemnification. Provider shall indemnify, defend and hold the County and its Commissioners, affiliates, employees, agents, and representatives (collectively referred to in this section as "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 Provider. 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.

XXIV. Number of Originals. This Contract shall be executed with four (4) originals, all of which are equally valid as an original.

XXV. 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.

XXVI. Insurance. The Provider shall provide all insurance required in Item VII Insurance Requirements as set forth in the Documents and Construction Specifications. 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 thirty (30) 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 Agreement until insurance is obtained, terminate this Agreement immediately without further action, or hold Provider in material default and pursue any and all remedies available. (Note: The Provider shall be required to provide the insurance required in Item VII Insurance Requirements as set forth in the Documents and Construction Specifications, and the provisions contained herein shall be adjusted accordingly.)

XXVII. Surety. As a material inducement for the County to enter this Contract, 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 term 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 or as set forth in the Project Bid Requirements. 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.

XXVIII. Liquidated Damages

Liquidated damages will be assessed according to the Alabama Department of Transportation Standard Specifications for Highway Construction 2012 Edition, Section 108.11.

XXIX. TITLE 39/CODE OF ALABAMA COMPLIANCE

As a condition of any Bid Award and the respective contract(s) pursuant thereto, the County places full reliance upon the fact that it is the sole responsibility of any contractor, person or entity entering into such a contract with Baldwin County for the prosecution of any public works to ensure that they and/or any of their respective agents comply with all applicable provisions of Sections 39-1-1, et seq., Code of Alabama (1975), as amended. More specifically, any contractor, person or entity entering into such a contract with Baldwin County for the prosecution of any public works shall be in compliance with, and have full knowledge of, the following provisions of Title 39:

"(f) The Contractor shall, immediately after the completion of the contract give notice of the completion by an advertisement in a newspaper of general circulation published within the city or county in which the work has been done, for a period of four successive weeks. A final settlement shall not be made upon the contract until the expiration of 30 days after the completion of the notice. Proof of publication of the notice shall be made by the contractor to the authority by whom the contract was made by affidavit of the publisher and a printed copy of the notice published . . . . §39-1-1(f) Code of Alabama (1975), as amended.

"(g) Subsection (f) shall not apply to contractors performing contracts of less than fifty thousand ($50,000) in amount. In such cases, the governing body of the contracting agency, to expedite final payment, shall cause notice of final completion of the contract to be published one time in a newspaper of general circulation, published in the county of the contracting agency and shall post notice of final completion on the agency's bulletin board for one week, and shall require the contractor to certify under oath that all bills have been paid in full. Final settlement with the contractor may be made at any time after the notice has been posted for one entire week." §39-1-1(g) Code of Alabama (1975), as amended.

XXIX. The public works project which is the subject of this invitation to bid is funded by County funding.

NOTE: Any failure to fully comply with this section or any applicable laws of the State of Alabama shall be deemed a material breach of the terms of both the Bid Award and the respective contracts resulting there from. Furthermore, Baldwin County takes no responsibility for resulting delayed payments, penalties, or damages as a result of any failure to strictly comply with Alabama Law.

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
BALDWIN COUNTY COMMISSION

_____ / 3/22/16
Chairman /Date

ATTEST:

_____ / 3-22-16
County Administrator /Date

PROVIDER: John G. Walton Construction Co., Inc.

_____/_____:

By _____ /Date 3/14/16

Its JOHN G. WALTON, PRESIDENT

NOTARY PAGE TO FOLLOW:

State of Alabama)

County of Baldwin)

I, Monica E. Taylor, Notary Public in and for said County and State, hereby certify that Tuckee Dorsey, as **Chairman** of the **Baldwin County Commission**, and Ronald J. Cink, as **County Administrator** of the Baldwin County Commission, whose names are signed to the foregoing in that capacity, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, they executed the same voluntarily on the day the same bears date for and as an act of the Baldwin County Commission.

GIVEN under my hand and seal on this the 23rd day of March, 2016

Monica E. Taylor
Notary Publi
My Commission Expires: My Commission Expires 09/05/2016

State of Alabama)

County of Mobile)

I, Debra Balams, Notary Public in and for said County and State, hereby certify that John G. Walton, as President of John G. Walton Construction Co., Inc., a Corporation, 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/she executed the same voluntarily on the day the same bears date for and as an act of said Corporation.

GIVEN under my hand and seal on this the 14th day of March, 2016.

Notary Public
My Commission Expires:

DEBRA BALAMS
My Commission Expires
October 31, 2018

BALDWIN COUNTY
HIGHWAY DEPARTMENT
P.O. Box 220
SILVERHILL, ALABAMA 36576
TELEPHONE: (251) 937-0371
FAX (251) 937-0201

CAL MARKERT, P.E.
COUNTY ENGINEER

March 29, 2016

John G. Walton Construction Co. Inc.
1806 Wolf Ridge Road
P.O. Box 81222 Mobile, Alabama 36689

RE: Resurfacing Projects FY 2016 Group 3
Notice to Proceed for Construction
Acct. No. 53100.5105.20163

Contract Type:	Project Let to Contract
Contractor:	John G. Walton Construction Co. Inc.
Project Limits:	Resurfacing projects FY 2016 Group 3
Price:	$2,135,471.40
Scope of Work:	John G. Walton Construction was awarded the contract March 1, 2016 to perform Group 3 resurfacing projects for Baldwin County
Date Notice to Proceed:	April 1, 2016
Due Date:	60 Working Days

John G. Walton Construction Co. Inc. should be aware that time charges will begin on **April 1, 2016** unless work begins earlier.
Sixty (60) working days are allowed for construction of this project.

Notice of your intention to begin work shall be provided to the Project Manager, **Michael Campbell.** He can be reached on his cell at **251-300-7692**.

If you have any questions or require any additional information concerning this matter please contact this office.

We look forward to working with John G. Walton Construction Co. Inc. towards a successful project.

Sincerely,

CAL MARKER, P.E.
COUNTY ENGINEER

By: Joey Nunnally BY Michael Shp
Joey Nunnally P.E.
Construction Manager

CM/JN/mc

CC Wanda Gautney
Amanda Reid
File