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 **Southern Forestry Consultants, Inc.,** (hereinafter referred to as "PROVIDER").

### WITNESSETH:

**Whereas,** at its regular meeting on Tuesday, June 19, 2016, the Commission authorized staff to solicit bids for the Land Management of 424.46 Acres of "Wet Pine Flatwoods Habitat" within the Baldwin County Mitigation Area, Gulf Shores, Alabama; and

**Whereas,** staff solicited bids with Southern Forestry Consultants, Inc., presenting the lowest bid to the County.

**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: Southern Forestry Consultants, Inc.

**II**. Obligations Generally. The COUNTY hereby retains, and the PROVIDER 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 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 necessary equipment, resources and 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 whether or not said law or regulation is mentioned herein.

**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: Southern Forestry Consultants, Inc.
103 Dixie Drive
Enterprise, AL 36330
ATTN: Holmes Hendrickson

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 #WG16-37"**, 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 #WG16-37 named, Land Management on 424.46 Acres of "Wet Pine Flatwoods Habitat" within the for the Baldwin County Mitigation Area, Gulf Shores, AL, for the Baldwin County Commission".**

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. PROVIDER shall closely coordinate the subject services with the COUNTY and designated personnel.

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.

**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, unless the additional costs are approved by the COUNTY in the form of a written Change Order.

**XX**. Direct Expenses. Compensation to PROVIDER 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. 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 and commence immediately upon the same date as full execution, and shall terminate upon either the expiration of not more than twelve (12) months after the Notice to Proceed is given or upon a written notification thereof received by either party within the required thirty (30) day period. [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. Provider shall indemnify, defend and hold County, and its Commissioners, Officers, and their 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 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.

**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

8/23/16

TUCKER DORSEY, Chairman /Date

ATTEST:

8-23-16

RONALD J. CINK /Date
County Administrator/Budget Director

State of Alabama )

County of Baldwin )

I, Monica E. Taylor, 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 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 23rd day of August, 2016.

Monica E. Taylor
Notary Public
My Commission Expires

My Commission Expires 09/05/2016

**SIGNATURE PAGE AND NOTARY PAGE TO FOLLOW**

PROVIDER:

***Southern Forestry Consultants, Inc.***

By Austin D. Carroll /8/5/16 /Date
Its Principal

State of Alabama)

County of Baldwin )

I, Deadra Sloane Kelley, Notary Public in and for said County and State, hereby certify that Austin D. Carroll as Principal of Southern Forestry Consultants, 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 Southern Forestry Consultants, Inc.

GIVEN under my hand and seal on this the 5th day of August, 2016.

Deadra Sloane Kelley
Notary Public
My Commission Expires

DEADRA SLOANE KELLEY
NOTARY
EXPIRES
GEORGIA
Oct. 1, 2019
PUBLIC
SEMINOLE COUNTY

"ATTACHMENT A"

**BID #WG6-37 RESPONSE FORM**
Land Management within Mitigation Area
Page 1 of 1

Date: June 29, 2016

Out of State X (Yes) or ____ (No) If yes, 919-941 (Registration Number)

Alabama Contractors License Number: _____

Company Name: Southern Forestry Consultants

Address: 103 Dixie Drive
Enterprise, Alabama 36330

Company Rep: Holmes Hendrickson
(Rep. Name Typed or Printed)

Position: Partner / Forester

Phone: 334-393-7868

Fax: 334-347-6073

**Bid Amount**

| | Unit Price | Units | Total Units | Total Amount |
|---|---|---|---|---|
| **Land Management to Achieve FCI Score of 0.6** | $ 280.60 | **Per Acre** | **424.46 acres** | $ ~~119,104.20~~ $119,103.48 |

COUNTY COMMISSION
BALDWIN COUNTY
312 COURTHOUSE SQUARE
SUITE 15
BAY MINETTE, ALABAMA 36507
(251) 580-2520 PH
(251) 580-2536 FX

WANDA GAUTNEY
PURCHASING &
GRANTS MANAGER

August 24, 2016

Southern Forestry Consultants, Inc.
103 Dixie Drive
Enterprise, AL 36330
**ATTN:** Holmes Hendrickson

**REFERENCE:** Competitive Bid #WG16-37 – Land Management of 424.46 Acres of "Wet Pine Flatwoods Habitat" within the Baldwin County Mitigation Area, Gulf Shores, Alabama for the Baldwin County Commission

Dear Mr. Hendrickson:

Please find attached a copy of the executed Contract and your Bid Guarantee. This letter is your **Notice to Proceed**.

The project should be coordinated with Joey Nunnally with the Baldwin County Highway Department at (251) 295-8337.

If you have any questions, please contact me at (251) 580-2520.

Sincerely,

WANDA GAUTNEY, Purchasing Manager
Baldwin County Commission

Attachment

cc: Highway Department

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