

State of Alabama     )  
County of Baldwin    )

**CONTRACT FOR CONSTRUCTION SERVICES**

This **Contract for 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 W.R. Mitchell Contractor, Inc. (hereinafter referred to as “PROVIDER”).

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

**WITNESSETH:**

**Whereas**, the Baldwin County Commission has authorized staff to solicit bids for the construction of the **Magnolia Entrance Facility Utilities**: and

**Whereas**, the Baldwin County Commission desires to award this Contract for Construction Services.

**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:
  - i. COUNTY:           Baldwin County, Alabama.
  - ii. COMMISSION:    Baldwin County Commission.
  - iii. PROVIDER:      W. R. Mitchell Contractor, 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 be on standby upon full execution of this contract. PROVIDER 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 Agreement and shall have the effect and enforceability as all other provisions herein.
  
- IV.   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.

- V. **Professional Qualifications.** For the purpose of this contract, the PROVIDER 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.
- VI. **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.
- VII. **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.
- VIII. **Legal Compliance.** PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.
- IX. **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.
- X. **No Agency Created.** It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Agreement; therefore, the PROVIDER does not in any manner act on behalf of COUNTY and the creation of such a relationship is prohibited and void.
- XI. **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 Agreement shall be construed as

if such invalid, illegal or unenforceable provision had never been contained herein.

- XII.** Entire Agreement. This agreement 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.
- XIII.** 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.
- XIV.** 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.
- XV.** 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.
- XVI.** 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: W. R. Mitchell Contractor, Inc.  
704 Shelton Beach Road  
Eight Mile, Alabama 36613

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

- XVII.** Services to be Rendered. PROVIDER 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 the Specifications and Contract Documents entitled Magnolia Entrance Facility Utilities dated May 2023, the same being expressly incorporated herein by reference, and without limitations 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:

The work to be performed by the Contractor under this Contract generally consists of the following tasks in the order shown:

Construction of a Magnolia Entrance Facility Utilities and related appurtenances.

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.

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 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.

**XVIII. General Responsibilities of the COUNTY.**

i. 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.

ii. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms, set out below.

**XIX. Termination of Services.** The COUNTY may terminate this contract, with or without cause or reason, by giving ten (10) days written notice of such to the other party. 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.

**XX. Compensation Limited.** The compensation to be paid to the PROVIDER shall be 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 Agreement and shall not be demanded by PROVIDER or paid by COUNTY.

**XXI. Direct Expenses.** Compensation to PROVIDER for work shall be paid **on a unit price basis as identified in the Bid Form submitted by the PROVIDER dated June 13, 2023 in the amount of one hundred sixty-three thousand, seven hundred four and no/100 dollars (\$163.704.00)**. 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.

**XXII. 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.

**XXIII. Performance of Work/Liquidated Damages.**

*i. Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

*ii. Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed in **thirty-five (35)** calendar days from date all submittals are approved.

B. The contract commences to run as provided in paragraph 2.03 of the General Conditions, and project shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **sixty-five (65)** calendar days after the date when the Contract Time commences to run.

*iii. Liquidated Damages*

CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the Time specified above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a

penalty), CONTRACTOR shall pay OWNER **liquidated damages in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction, 2022 Edition, Section 108.11 – Schedule of Liquidated Damages, Calendar Day basis** for each day that expires after the time specified for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

**XXIV. 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.

**XXV. Indemnification.** Provider shall indemnify, defend and hold County and its 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, 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. This indemnification shall survive the expiration or termination of this agreement.

**XXVI. Number of Originals.** This Agreement shall be executed with three (3) originals, both of which are equally valid as an original.

**XXVII: Insurance:** Prior to performing services pursuant to this Agreement, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and nonowned 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 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.

## **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 Agreement, the services and/or work described in this Agreement 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 performance bond and/or surety guarantee shall be in the amount equal to 100 percent of the total cost identified in the bid response. The payment bond and/or surety guarantee shall be in the amount equal to 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 Agreement. 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 Agreement. In the event that the bond and/or surety guarantee is in conflict with this Agreement, this Agreement shall govern. Neither this section nor this provision limits the duties of the Provider/Contractor to satisfy all of the requirements in this Agreement.

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

ATTEST:

\_\_\_\_\_/\_\_\_\_\_  
CHARLES F. GRUBER    Date  
Chairman

\_\_\_\_\_/\_\_\_\_\_  
ROGER RENDLEMAN    Date  
County Administrator

State of Alabama

County of Baldwin

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that, Charles F. Gruber, whose name as Chairman of the Baldwin County Commission, and Roger Rendleman, 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 the Contract for 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 official seal, this the \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
My Commission Expires

**Signature and Notaries to Follow**



CONTRACTOR: W.R. Mitchell Contractor, Inc.

\_\_\_\_\_/\_\_\_\_\_  
WILLIAM M. MCGOUGH    Date  
Vice President

State of Alabama

County of Mobile

I, \_\_\_\_\_, a Notary Public in and for said County and State, hereby certify that William M. McGough whose name as Vice President of W.R. Mitchell Contractor, 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 Corporation.

GIVEN under my hand and seal on this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
My Commission Expires