



City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 13-0343-RES

File Number: 13-0740

Enactment Number: 13-0343-RES

Consider Resolution Hiring Hoar Program Management

WHEREAS, Hoar Program Management has submitted a Master Services Agreement for professional "Project Management and Owner's Representative Services". Hoar's services includes projects such as overseeing the Event Center and Outdoor Athletic Fields design/development and to monitor the ATRIP grant spending for work performed by Volkert.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves hiring Hoar Program Management, at the established hourly rates, as outlined in their Master Services Agreement, which is made a permanent part of this resolution upon its adoption.

SECTION 2: Appropriates \$50,000 under Account No. 12-665-7312 Q89. City staff shall report back to Council and the Finance Department on how the appropriated funds are being spent.

SECTION 3: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, APPROVED AND ADOPTED this 17th day of June, 2013.

Aye: 4 Council Member Quaites, Council Member Hellmich, Council Member Blackwell and Council Member Ebert III

Abstain: 1 President Trawick



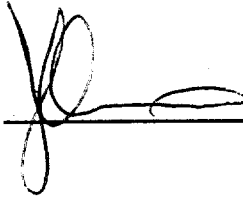
President's Signature _____

Date _____

Attest by City Clerk Victoria Southern

Date 6-19-2013

Mayor's Signature

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line and a small flourish.

Date

6/19/2013

City of Foley, Alabama Program Manager Master Services Agreement

ARTICLE 1 SERVICES AND OTHER DEFINITION

1.1 "Services" and "Work" are synonymous for purposes of this Contract and mean **Project Management and Owner's Representative Services** for any Project of Owner made subject to this Contract by virtue of execution of an Amendment (as defined below)

1.2 "Amendment" means an amendment executed by Owner and PM in substantially the form of attached Exhibit A identifying a particular capital improvement project (s) of Owner. An Amendment by Owner and PM subjects the capital improvement project (s) identified in that Amendment to the terms and conditions of this Contract.

1.3 "Project" means any capital improvement project undertaken by Owner for which Owner and PM execute an Amendment. "Projects" refers collectively all Projects.

1.4 "Program" means the various Projects undertaken and underway from time to time by Owner in regard to its various properties, but does not include any capital improvement project of Owner for which an Amendment has not been executed by Owner and PM. Execution of this Contract does not obligate Owner to use PM in connection with any capital improvement project.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

2.1 Owner and Program Manager: For the purposes of this agreement the Owner shall refer to City of Foley and the PM shall refer to Hoar Program Management, a division of Hoar Construction, LLC.

2.1.1 Relationship: Program Manager ("PM") shall be Owner's principal agent in providing Program Management and Owner's Representative Services described in this Contract. PM and Owner each accept the relationship of trust and confidence between them, which is established in this Contract.

2.1.2 : Standard of Service: PM shall furnish its services properly, in accordance with the standards of its profession, and in accordance with applicable federal, state and local laws and regulations which are in effect on the date of this Contract.

2.2 Owner and Designer:

2.2.1 Owner-Designer Agreement: Owner shall enter into a separate agreement, the "Owner-Designer Agreement," with one or more designer professionals to provide for the design of any Project related to the Program and certain design-related services during the Construction Phase of a Project. The Project is defined in Article 1 of this Contract.

2.2.2 Changes: Owner shall not modify the Owner-Designer Agreement in any way that is prejudicial to PM. If Owner terminates Designer's services, a substitute acceptable to PM shall be appointed. PM to have opportunity to review for A & E contract prior to final acceptance by the Owner

2.3 Owner and Prime Contractors:

2.3.1 Construction Contract: Owner may enter into a separate contract with one or more Contractors for the construction of a Project within the Program.

2.4 Relationship of PM to Other Project Participants:

2.4.1 Working Relationship: In providing the Program Management and Owner's Representative Services described in this Contract, PM shall endeavor to maintain, on behalf of Owner, a working relationship with all vendors involved with the "Program".

2.4.2 Limitations: Nothing in this contract shall be construed to mean that PM assumes any of the responsibilities of any other consultant or contractor involved with the Program. All consultants are solely responsible for their individual scope of services and compliance with any local, state or federal requirements.

ARTICLE 3 BASIC SERVICES

3.1 Program Manager's Basic Services: As the Program is more clearly defined, specific project scope of services will be incorporated into this Master Services agreement via Amendment to Article 3. Any and all staffing increases or decreases will be addressed in Article 3. Billing for increases to

staff for specific projects will be in accordance with Exhibit A (Hourly Rate schedule) unless otherwise agreed upon in Article 3. The rates reflected in Exhibit A will be subject to annual increases to cover inflation and possible increased cost of employment. The increase to the Hourly Rate schedule will be at the mutual consent of both the Program Manager and the Owner.

ARTICLE 4 DURATION OF MASTER SERVICE AGREEMENT

4.1 The commencement date for The Master Service Agreement shall be the date of the execution of this Contract.

4.2 The duration of The Master Services Agreement under this Contract shall be 365 consecutive calendar days from the commencement date and to be automatically renewed annually unless Hoar Program Management is notified in writing within 60 days prior to the anniversary date of this contract. For specific durations for projects reference Amendments as indicated in Article 3.

4.3 The duration of The Master Service Agreement may be changed only as specified in Article 5.

ARTICLE 5 CHANGES TO MASTER SERVICE AGREEMENT TERMS AND CONDITIONS

5.1 OWNER CHANGES:

5.1.1 Once the Scope of Services have been defined in Article 3 of this agreement, Owner, without invalidating this Contract, may make changes in Program Manager's Basic Services. PM shall promptly notify Owner of changes that increase or decrease PM's compensation or the duration of Program Manager's Basic Services or both.

5.1.2 If the scope or the duration of this agreement is changed, PM's compensation shall be adjusted equitably. A written proposal indicating the change in compensation for a change in the scope or duration of shall be provided by PM to Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of the change in compensation to be

paid shall be determined on the basis of PM's cost and a reasonable adjustment in PM's fixed, lump sum, or factor fee consistent with the provisions of Article 7.

5.2 AUTHORIZATION:

5.2.1 Changes in Program Manager's Basic Services and entitlement to additional compensation or a change in duration of this Contract shall be made by a written amendment to this Contract executed by Owner and PM. The amendment shall be executed by Owner and PM prior to PM's performing the services required by the amendment.

5.2.2 PM shall proceed to perform the services required by the amendment only after receiving written notice from Owner directing PM to proceed.

5.3 INVOICES FOR ADDITIONAL COMPENSATION:

5.3.1 PM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Contract.

ARTICLE 6 OWNER'S RESPONSIBILITIES

6.1 Owner shall provide to PM complete information regarding Owner's knowledge of and requirements for the Program. Owner shall be responsible for the accuracy and completeness of all reports, data, and other information furnished. PM may use and rely on the information furnished by Owner in performing services under this Contract and on the reports, data, and other information furnished by Owner's consultants.

6.2 Owner shall be responsible for the presence at the site of any asbestos, PCB's, petroleum, radioactive materials and other hazardous materials, and the consequences of such presence.

6.3 Owner shall promptly review all reports, requests and information submitted by PM and as appropriate shall respond or render decisions pertaining promptly. Owner's responses and decisions are critical to the Program Schedule and, accordingly, Owner agrees to furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with PM consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary restraints of the Program.

6.4 Owner shall furnish legal, accounting and insurance counseling services as may be necessary for the Program.

6.5 Owner shall furnish insurance for the Program as specified in Article 8.

6.6 If Owner observes or otherwise becomes aware of any fault or defect with any Project or any Work that does not comply with the requirements of the Contract Documents, Owner shall give prompt written notice thereof to PM.

6.7 Owner shall retain necessary consultants to carry out the scope of projects as the scope is defined. The Services, duties and responsibilities set out in the agreements with any of the Owner's consultants shall be compatible and consistent with this contract. Owner shall require that all consultants perform its services in cooperation with the PM in order not to hinder the overall success of the Program. Owner shall provide the PM with a copy of all agreements with the consultants and Owner represents to the PM that all the terms of those agreements have been acknowledged by and accepted to the consultant. PM agrees to perform all duties and responsibilities that Owner has agreed PM will perform in the agreements between Owner and any consultants. The terms and conditions of the Agreement between Owner and consultant shall not be changed without written consent of PM, which consent shall not be unreasonably withheld. A Designer whose services, duties and responsibilities shall be described in a written agreement between Owner and Designer. The services, duties and responsibilities set out in the Agreement between Owner and Designer shall be compatible and consistent with this Contract and the Contract Documents. Owner shall, in its agreement with Designer, require that Designer perform its services in cooperation with PM, consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary restraints of the Project. Owner shall provide to PM a copy of the Agreement between Owner and Designer, and Owner represents to PM that all the terms of that Agreement have been acknowledged by and are acceptable to Designer. PM agrees to perform all duties and responsibilities that Owner has agreed PM will perform in the Agreement between Owner and Designer. The terms and conditions of the Agreement between Owner and Designer shall not be changed without written consent of PM, which consent shall not be unreasonably withheld.

6.8 Owner shall cause any and all agreements between Owner and any consultant or vendor to be compatible and consistent with this Contract. Each of the agreements shall include waiver of subrogation and shall expressly recognize PM as Owner's agent in providing the Program Manager's Basic and Additional Services specified in this Contract.

6.9 Owner shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, building permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.10 Owner shall furnish evidence satisfactory to PM that sufficient funds are available and committed for the entire cost of the Program. Unless such reasonable evidence is furnished, PM is not required to commence Program Manager's Services and may, if such evidence is not presented within a reasonable time, suspend the Services specified in this Contract upon fifteen (15) days' written notice to Owner. This should help eliminate making contractual obligations prior to funding being available. In such event, PM shall be compensated in the manner provided in Paragraph 9.2.

6.11 Owner shall send to PM and shall require all consultants or vendors to send to PM copies of all notices and communications received during the duration of the Program. During the Construction Phase of the Project, Owner shall require that Prime Contractors submit all notices and communications relating to the Project directly to PM.

6.12 Owner shall designate in writing an officer, employee or other authorized representatives to act in Owner's behalf with respect to the Program. This representative shall have the authority to approve changes in the scope of the Program and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

6.13 Owner shall make payments to Consultants and Vendors recommended by PM on the basis of Consultant and Vendor's applications for payment.

ARTICLE 7 CONTRACT PRICE AND PAYMENT

7.1 Basis for Contract Price: Unless provided otherwise, the basis for the contract price to be paid PM for Services shall be in accordance with conditions established in Article 3 of this agreement.

7.2 Basis for Payment for Consultants Engaged By PM: For architects, engineers, and other consultants engaged by PM to perform services related to the Project, PM shall be paid the amount of the invoice times a multiple of 1.10.

7.3 Direct Expenses: In addition to the amounts provided for in Paragraphs 7.1 and 7.2, PM shall be reimbursed for its actual approved expenditures made by PM, and by engineers, architects and its consultants engaged by PM on behalf of the Owner. Also to include without limitation:

7.3.1 Long distance telephone calls, telegrams, facsimiles, and similar charges;

7.3.2 Handling, shipping, mailing and reproduction of materials and documents;

7.3.3 Transportation and living expenses when traveling in connection with the Project;

7.3.4 Computer equipment, computer software purchased, electronic data processing service and electronic data processing equipment, word processing equipment;

7.3.5 Insurance which PM is required to carry by the terms of this Contract which are not included as part of the contract rates.

7.3.6 Relocation of employees and their families;

7.3.7 Temporary living expenses of employees, who are not relocated, but assigned to the Project;

7.3.8 Gross receipts taxes, sales or use taxes, service taxes and other similar taxes required to be paid as a result of performance of services by PM of this Contract;

7.3.9 Field office expenses including the cost of office rentals, field telephones, utilities, field furniture, equipment and supplies; and

7.3.10 Legal costs reasonably and properly incurred by PM in connection with its performance under this Contract.

7.3.11 Fees paid for securing approval of authorities having jurisdiction over the Project;

7.4 Program Manager's Accounting Records: Records of PM's personnel expense, engineers', architects' and consultants fees and direct expenses pertaining to the Program shall be maintained on the basis of generally-accepted accounting practices and shall be available for inspection by Owner or Owner's representative at mutually convenient times for a period of two years after completion of the Construction Phase.

7.5 **Payments:** Payments shall be made monthly, not later than thirty (30) days after presentation of PM's invoice to Owner, as follows:

7.5.1 Payment of the Contract Price as indicated in Paragraph 7.1 shall be in amounts prorated equally over the duration of Program Manager's Services. The duration shall be as set out in Article 4;

7.5.2 Payment of expense and the fixed hourly rate for principals shall be in amounts equal to the actual hours spent during the billing period on the Program multiplied by the rates and multiples stated in Exhibit A;

7.5.3 Payment of engineer, architect and consultant services shall be in amounts equal to the invoice in receipt by PM for the billing period times the multiplier stated in Paragraph 7.2;

7.5.4 Reimbursement for direct expenses shall be in amounts equal to expenditures made during the billing period and during previous billing periods not yet invoiced times the multiplier stated in Paragraph 7.2;

7.5.5 Unless there has been proven negligence by the PM, no deductions shall be made from PM's compensation due to any claim by Owner, or its consultant or vendors or others not a party to this Contract or due to any liquidated damages, retainage or other sums withheld from payments to any consultant or vendor or others not a party to this Contract; and

7.5.6 **Compensation for Additional Services:** PM shall be compensated and payments shall be made for performing Additional Services in the same amount and manner as provided in Article 7 for Basic Services. There shall be an increase in the fixed fee set out in Paragraph 7.2 in an amount that is mutually agreeable between Owner and PM.

7.6 **Fixed Price:** *not applicable*

ARTICLE 8 INSURANCE AND MUTUAL INDEMNITY

8.1 **Program Manager Insurance:**

8.1.1 PM shall purchase and maintain insurance to cover the following:

8.1.1.1 Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the Work performed;

8.1.1.2 Claims for damages for bodily injury, occupational sickness or disease or death of PM's employees under any applicable employer's liability law;

8.1.1.3 Claims for damages for bodily injury or death of any person other than PM's employees to the extent that it arises out of PM's negligence;

8.1.1.4 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use therefrom to the extent that it arises out of PM's negligence; or

8.1.1.5 Claims for damages for bodily injury or death of any person or property damage arising out of Ownership, maintenance or use of any motor vehicle to the extent that it arises out of PM's negligence.

8.1.2 Program Manager's Comprehensive General and Automobile Liability Insurance.

8.1.3 Comprehensive General Liability Insurance may be obtained under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

8.1.4 The foregoing policies shall be written for not less than the limits agreed upon by PM and Owner and shall contain a provision that coverages afforded under the policies shall not be canceled or expire until at least thirty (30) days written notice has been given to Owner and shall include the Owner as an additional insured under the policies. Certificates of insurance showing such coverage to be in force shall be filed with Owner prior to commencement of PM's services.

8.2 Owner's Insurance:

8.2.1 Owner shall be responsible for purchasing and maintaining its own liability insurance and at Owner's option, may purchase and maintain such additional insurance to protect Owner against claims losses, or damages that may arise from any project performed under the Program.

8.2.2 PM, as agent of Owner, shall be named as an additional insured in any insurance policy obtained by Owner or its consultants/vendors/contractors for any project performed under the Program.

8.2.3 Owner shall be responsible for purchasing builder's risk insurance on an all risk basis, sufficient to cover the interests of PM.

8.3 Notices and Recovery:

8.3.1 Owner and PM each shall provide the other with copies of all policies thus obtaining for the Program. Each party shall provide the other thirty (30) days written notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

8.4 Waiver of Subrogation:

8.4.1 Owner and PM waive all rights against each other and against Prime Contractor, Designer, consultants, agents and employees of the other for damages during construction covered by any property insurance as set forth in the Contract Documents. Owner and PM shall each require similar waivers from their Prime Contractors, consultants and agents.

8.5 Indemnity:

8.5.1 PM hereby agrees to indemnify and hold harmless Owner, and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from the negligent acts or omissions of PM in performing the Program Manager's Services under this Contract provided, however, that PM does not assume any risk of damages and shall not be liable for any damages to any project within the Program or to property that is incorporated in, or shall be incorporated in, or is located on a project site. The total liability of PM arising by reason of this indemnity for losses that are not insured or exceed the amount of available insurance shall not exceed the amount of the total compensation actually paid to PM by Owner pursuant to this Contract.

8.5.2 The Owner shall cause each Designer, Engineer or any other Owner contracted Vendor, (hereinafter collectively referred to as Agents), to agree to defend, indemnify and exonerate the Program Manager (and its agents and employees) as to and from all liability, claims, action, causes of action, lawsuits and demands (including all judgments and settlements made at arms length and all attorneys fees and litigation expense connected therewith) for personal injury, death, (including personal injury or death of the Agents' own employees) and/or property damage arising out of any act or omissions, work or operation performed by, for, and on behalf of the Agents. The foregoing covenant and agreement shall include all such liabilities, claims, lawsuits and demands where it is charged, alleged or proven that the Agents (or its agents or employees) was in any way at fault in causing or contributing to such injury, death or property damage. The Agents' liability insurance policies shall each contain contractual insurance coverage so as to protect the Agents and in turn the Program Manager as to the covenant contained in this section. The Program Manager shall be named as an additional insured in the Agents' comprehensive

general liability, automobile and excess liability insurance policies.

8.5.3 Owner hereby agrees to defend, indemnify, and hold harmless PM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from negligent acts or omissions of Owner, its employees, agents, representatives, independent Prime Contractors, material suppliers, Prime Contractor and Designer.

ARTICLE 9

TERMINATION AND SUSPENSION

9.1 Termination by Owner for Convenience:

9.1.1 Project Canceled or Deferred: This Contract may be terminated by Owner for its convenience upon ninety (90) days' written notice to PM if such termination is the result of Owner canceling or indefinitely deferring the Program.

9.1.1.1 Payment Due PM: If the Program is canceled or indefinitely deferred and this Contract is terminated by Owner, PM shall be paid (i) the amounts due for services performed and expenses incurred up to the effective date of termination, and (ii) all expenses incurred as a result of such termination, whether incurred prior to, during or after such termination, plus an amount calculated as follows:

9.1.1.2 If the termination occurs during the Pre-design Phase, Design Phase or Bidding Phase, twenty (20) percent of the total amount paid, plus amount due at termination;

9.1.1.3 If the termination occurs during the Construction Phase or Post-Construction Phase, ten (10) percent of the total amount paid, plus amount due at termination;

9.1.2 Termination by Owner For Cause: Owner may terminate PM (i) for cause if PM has materially failed to perform its duties and obligations under this Contract and if Owner has given PM written notice of the intent to terminate for cause and the reasons for the intent to terminate for cause and has allowed PM fourteen (14) days to cure the alleged reasons and has thereafter provided written notice of termination, or (ii) for a suspension of sixty (60) days or more based on order of a court or other authority having jurisdiction or other event not the fault of either party, upon Owner giving fourteen (14) days' written notice.

9.1.2.1 PM shall be due the amounts set out in Section 9.1.1.1 except for the amounts called for in Section 9.1.2.

9.2 Termination by PM:

PM may terminate this Contract for (i) nonpayment by Owner, (ii) suspension of the Program for more than ninety (90) days, or (iii) material breach or failure of Owner to comply with this Contract.

9.2.1 In such event PM shall be paid consistent with Paragraph

9.3 Suspension:

9.3.1 Owner may in writing order PM to suspend all or any part of Program Manager's Services for the Program for the convenience of Owner or for stoppage beyond the control of Owner or PM. If the performance of all or any part of the Services for the Program is so suspended, an adjustment in PM's compensation shall be made for the increase, if any, in the cost of PM's performance of this Contract caused by such suspension and this Contract shall be modified in writing accordingly.

9.3.2 In the event Program Manager's Services for the Program are suspended, Owner shall reimburse PM for all of the costs of its staff on at the time of the suspension for the first thirty (30) days of such suspension. PM shall reduce the size of its project staff for the remainder of the suspension period as directed by Owner and, during such period, Owner shall reimburse PM for all of the costs of its reduced staff. Upon cessation of the suspension, PM shall restore the staff in accordance to meet the requirements of the Program at that time.

9.3.3 Persons assigned by PM to another project during such suspension periods and not available to return to the Program upon cessation of the suspension shall be replaced. Owner shall reimburse PM for costs incurred for relocation of previous staff persons returning to the Program or for new persons assigned to the Program.

ARTICLE 10 DISPUTE RESOLUTION

10.1 Owner and PM shall submit all unresolved claims, counterclaims, disputes, controversies, and other matters in question between them arising out of or relating to this Contract or the breach thereof ("disputes"), to mediation prior to either party's initiating against the other a demand for arbitration pursuant to Paragraph 10.2; provided, that if mediation is not conducted within sixty (60) days of a written request by either party to mediate, then either party can demand arbitration pursuant to Paragraph 10.2.1.

10.1.1. Owner and PM shall agree in writing as to the identity of the mediator and the rules and procedures of the mediation. If Owner and PM cannot agree, the dispute shall be submitted to mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association.

10.2 All disputes that Owner and PM are unable to resolve by mediation as aforesaid shall be finally decided by binding arbitration.

10.2.1 The parties agree that this Contract involves interstate commerce and the agreement to arbitrate is governed by the Federal Arbitration Act (9 USC § 1 et seq.) and the arbitration will be conducted in Baldwin County in the state of Alabama. that the agreement to arbitrate, and Any award of the arbitrator(s) shall be specifically enforceable in Baldwin County in the state of Alabama any court having jurisdiction.

10.2.2 Owner and PM agree to submit all disputes to arbitration under the then current Construction Industry Rules of the American Arbitration Association.

10.2.3 Notice of demand for arbitration must be filed in writing with the other party to this Contract and with the American Arbitration Association. The demand must be made within a reasonable time after the dispute has arisen, but not prior to or during the pendency of the mediation as agreed in Paragraph 10.1. In no event may the demand for arbitration be made after the date when institution of legal proceedings based on such dispute in question would be barred by the applicable statute of limitations.

10.2.4 No arbitration arising out of, or relating to, this Contract may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Contract unless both parties agree otherwise in writing.

10.2.5 The award rendered by the arbitrator(s) will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modification or appeal.

10.2.6 In any judicial proceeding to enforce this Contract to arbitrate, the only issues to be determined shall be those set forth in 9 U.S.C. § 4 Federal Arbitration Act, and such issues shall be determined by the Court without a jury. All other issues, such as, but not limited to, arbitrability, prerequisites to arbitration, compliance with contractual time limits, applicability of indemnity clauses, clauses limiting damages and statutes of limitations shall be for the arbitrator(s), whose decision thereon shall be final and binding. The parties agree to file no interlocutory appeal of an order compelling arbitration.

10.2.7 Unless otherwise agreed in writing, PM shall continue to carry out its responsibilities under this Contract during any dispute, and Owner shall continue to make payments in accordance with this Contract.

ARTICLE 11 ADDITIONAL PROVISIONS

11.1 Confidentiality – Except for communication related to the performance of its services under this Contract, or for communications related to filings with, or otherwise required by, governmental bodies having jurisdiction over a particular project performed under this contract, or for information required to be disclosed by law or regulation or for publicity approval by Owner, PM agrees to keep all information concerning the Program confidential.

11.2 Limitation and Assignment – Neither the Owner nor PM shall assign or transfer its interest in this Contract without the written consent of the other, except that PM may, without approval of Owner, assign accounts receivable to a commercial bank or other financial institution for securing loans. In the event of an assignment by Owner, Owner agrees that it shall remain liable for payments due to PM under this Contract in the event the assignee fails to make such payments.

11.3 Governing Law – This Contract shall, unless otherwise provided, be governed by the law of the state Alabama.

11.4 Extent of Agreement – This Contract constitutes the entire agreement between the parties and incorporates all prior agreements and understandings in connection with the subject matter hereof. This Contract may be amended only by a written amendment signed by Owner and PM. Nothing contained in this Contract is intended to benefit any third party.

11.5 Severability – If any portion of this Contract is held as a matter of law to be unenforceable, the remainder of this Contract shall be enforceable without such portion.

11.6 Meaning of Terms – References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

11.7 Notices – All notices required by this Contract or other communications to either party by the other shall be deemed given when made in writing and delivered either by hand delivery, or by depositing in the United States Mail, postage prepaid, addressed as follows, or by facsimile sent to the following fax number, or by E-mail sent to the following E-mail address:

To Owner:

Mayor John Konair
407 East Laurel Avenue
P.O. Box 1750
Foley, Alabama 36536
Phone: 251 – 943 – 1545
Fax: 251 – 952 - 4014

To Program Manager:

Mike Lanier, Hoar Program Management
150 Government Street, Suite 3500
Mobile, AL 36602
Fax #: 251-431-9857
E-Mail: lanier@hoarpm.com

11.8 Exhibit A – Billing Rates -

11.8.1 Exhibit B – Certificate of Insurance – Dated 7/1/2011

Arbitration: The parties expressly acknowledge that this Contract contains an agreement to final and binding arbitration of all disputes that might relate to or arise out of this Contract.

IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date set forth on page 1 hereof.

ATTEST:

Witness: Victoria Southern

OWNER

By: [Signature]

Title: Mayor

Witness: [Signature]

Program Manager

By: [Signature]

Title: President

EXHIBIT "A"

City of Foley, Alabama
MASTER SERVICES AGREEMENT
BILLING RATES

Mike Lanier – Vice President – Program Management	\$225.00 / hr
Jason Abernathy – Director of Construction Services	\$190.00 / hr
Greg Ellis – Director of Preconstruction Services	\$170.00 / hr
Bill McReynolds – Manager of Development Services	\$165.00 / hr
tbd – Project Manager	\$155.00 / hr
Project Superintendent – TBD	TBD
Estimator	\$ 125.00 / hr
tbd - Project Engineer	\$ 110.00 / hr
Administrative Assistant	\$ 50.00 / hr



EXHIBIT B

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/01/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MCGRIFF, SEIBELS & WILLIAMS, INC. P.O. Box 10265 Birmingham, AL 35202	CONTACT NAME: PHONE (A/C, H/L, E/C): 800-476-2211 FAX (A/C, H/L): E-MAIL: ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED Hoar Construction, LLC P.O. Box 660400 Birmingham, AL 35266-0400	INSURER A: American Contractors Ins Co RRG	NAIC #
	INSURER B: ACIG Insurance Company	19984
	INSURER C: Charter Oak Fire Insurance Company	
	INSURER D: Illinois Union Insurance Company	27960
	INSURER E: St Paul Travelers	
	INSURER F:	

COVERAGES		CERTIFICATE NUMBER: STC88CWW		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR. LTR.	TYPE OF INSURANCE	PRODUCER (INSR. LTR.)	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC		GL11000034 Primary GL11X00034 Excess FF	06/01/2011	06/01/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (E&S accident type) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
C	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ☒ Mixed Physical Damage		DT81059098719C0F11	06/01/2011	06/01/2012	COMBINED SINGLE LIMIT (E&S accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
D	UMBRELLA LIAB ☒ EXCESS LIAB ☐ RETENTION \$ ☒ OCCUR ☐ CLAIMS-MADE		G21979132006	06/01/2011	06/01/2012	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		WC11000025 WC11000095 (TX,KY,WV)	06/01/2011	06/01/2012	☒ WC STATU-TORY LIMITS ☐ OTH-ER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
E	COMBINED INLAND MARINE Owned Equip & Leased/Rented Equip on File w/Co., All Risk Coverage, Boom & Overload Exclusion Removed. Valuation is Actual Cash Value		QT6604022N996	06/01/2011	06/01/2012	Leased/Rented/Per Occ Per Item \$ 750,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

For Evidence Purposes Only

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Paul B. David