

PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF FOLEY
AND
BERRY, DUNN, MCNEIL & PARKER, LLC dba BERRYDUNN

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into between the City of Foley, a City of the State of Alabama, with an office located at 407 East Laurel Avenue, Foley, AL 36535 (hereinafter the "CITY"), and Berry, Dunn, McNeil & Parker, LLC dba BerryDunn, with an office located at 2211 Congress Street, Portland, ME 04102 (hereinafter the "CONSULTANT"). The CITY and CONSULTANT are sometimes referred to in this Agreement as the "parties" and each, individually, as a "party."

The CONSULTANT hereby agrees with the CITY, for the consideration named herein, to perform the services stipulated in this Agreement.

1. CONSULTANT'S SERVICES

A. The CONSULTANT, on behalf of the CITY, will perform and carry out in a professional manner the components essential to provide consulting services to develop a Strategic Plan.

B. The Scope of Work will be defined by the CITY'S Request for Proposals No. CF-050423 and CONSULTANT'S Proposal dated May 4, 2023. These documents are attached hereto as Exhibit A and Exhibit B, respectively, and are incorporated herein by reference.

C. Compensation for work provided by CONSULTANT will be as follows:

Please see the "Pricing" section of CONSULTANT'S Proposal, Exhibit B, page 22, which provides for a total fixed-fee cost (including travel expense estimate) of \$79,100.

2. THE CITY WILL PROVIDE

A. Access to pertinent information and available data requested by the CONSULTANT.

B. Any assumptions that are necessary to the work to be performed by CONSULTANT.

C. Attendance and participation at all scheduled meetings and work sessions.

D. Timely review of draft and preliminary materials submitted by the CONSULTANT.

3. DOCUMENTS

All documents and services provided by the CONSULTANT pursuant to this Agreement are instruments of service with respect to this project. Upon receipt of payment for these services, the CONSULTANT'S documents and material developed by the CONSULTANT under this Agreement are the property of the CITY. The CITY has the right to re-use these documents and

computer software on extensions of the project or for other projects; provided that such re-use will be at the CITY'S sole risk and without liability or legal exposure to the CONSULTANT.

4. NONDISCLOSURE OF PROPRIETARY INFORMATION

The CONSULTANT will consider all information provided by the CITY and all reports, studies, and other documents resulting from the CONSULTANT'S performance of these services to be proprietary unless such information is available from public sources. The CONSULTANT will not publish or disclose proprietary information for any purpose other than the performance of the services under this Agreement without the prior written authorization of the CITY or in response to legal process. The CONSULTANT will maintain all originals in the CONSULTANT'S files for a period of not less than three (3) years from the date CONSULTANT completes these services and will provide the CITY access to and the right to examine and copy information contained in the files pertaining to the services. In the event of legal process, the rights of access, examination, and copying hereunder will continue until the conclusion of any litigation, appeals, claims, arbitration, or other legal process.

5. CHANGES AND ADDITIONS

CONSULTANT will notify the CITY in writing of any recommended or necessary modifications or additions to the Scope of Work contemplated under this Agreement. Compensation for all changes or additions in the Scope of Work must be negotiated and approved by the parties in writing.

6. ADDITIONAL SERVICES

The CITY may request additional services associated with this project that are outside of the Scope of Work contemplated under this Agreement. If CONSULTANT agrees to any such request, compensation for these additional services will be based on CONSULTANT'S current billing rates plus reasonable travel expenses. The parties will approve the scope, number of hours, and fee schedule for such services in writing before CONSULTANT begins any additional work.

7. NOTICE

A. Any notice, demand, or request required by or made pursuant to this Agreement must be in writing and will be deemed properly made if personally delivered or deposited in the United States mail, postage prepaid, to the representative specified below, and/or sent to the email address(es) that the parties have routinely used to communicate with each other during the term of this Agreement. Provided, however, that any notice of suspension or termination pursuant to Section 10 of this Agreement must be sent by United States certified mail, postage prepaid, return receipt requested and will not become effective until the date of receipt. Nothing in this paragraph is intended to restrict the transmission of routine communications between the parties' representatives.

B. The name and mailing address of CITY'S Representative for purposes of this notice provision, unless and until another person is designated in writing, is Ralph Hellmich, Mayor, City of Foley, 407 East Laurel Avenue, Foley, AL 36535.

C. The name and mailing address of CONSULTANT'S Representative for purposes of this notice provision, unless and until another person is designated in writing, is Seth Hedstrom, Principal, Berry, Dunn, McNeil & Parker, LLC, 2211 Congress Street, Portland, ME 04102.

8. MANNER OF PAYMENT

A. The CONSULTANT will furnish the CITY with timely progress invoices each month for services rendered to date for each project phase. The terms of payment will be net thirty (30) days.

B. The CONSULTANT may assess late payment charges at the rate of one and one-half percent (1.5%) per month for any past due payments.

C. If any invoice is the subject of a legitimate dispute between the parties, no late payment charges will apply to any amounts not paid by the CITY because of said dispute; and CITY will pay all amounts not reasonably deemed to be included in the dispute.

9. FORCE MAJEURE

CONSULTANT will use commercially reasonable efforts to complete all services contemplated under this Agreement. However, neither party will be liable to the other party for any failure to perform, or delay in performance of, any obligation under this Agreement to the extent such failure or delay has been wholly or principally caused by acts or events beyond CONSULTANT'S reasonable control rendering performance illegal or impossible. As used in this section, "force majeure" means any cause beyond the reasonable control of a party including, but not limited to, an act of God, nature, act of aggression, fire, strike, flood, riot, war, delay of transportation, terrorism, pandemics or other widespread outbreaks of infectious diseases, or the inability, due to the aforesaid causes, to obtain necessary labor, material, or facilities.

10. TERMINATION OR SUSPENSION OF CONTRACT

A. Either party may terminate this Agreement upon written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party; provided, however, that the terminating party has first given the other party written notice of the reason for such termination and the other party has failed to cure or rectify the issue or matter within fifteen (15) days of receipt of such notice.

B. In the event the CITY terminates the CONSULTANT'S services as permitted under Section 10.A of this Agreement, the CITY will pay the CONSULTANT for all services performed to the effective date of termination. The CONSULTANT will be entitled to receive only the fair value of services rendered and direct out of pocket expenses incurred hereunder prior to the effective date of such termination. Upon restart of a project previously terminated, equitable adjustment may be made to compensation for remobilization of the project.

11. ASSIGNMENT

Neither party will assign or transfer their rights or obligations in this Agreement without the written consent of the other party, and such consent will not be unreasonably withheld.

12. INSURANCE

The CONSULTANT will purchase and maintain insurance that will cover all CONSULTANT'S employees while performing the services contemplated under this Agreement and any work incidental to the performance of this Agreement. A Certificate of General Liability insurance, Workers Compensation insurance, and Proof of Automobile General Liability insurance listing the City of Foley as an additional insured will be provided to the CITY and will be maintained throughout the term of the project.

13. ETHICS IN PUBLIC CONTRACTING

The CONSULTANT certifies that its proposal was made without collusion or fraud and that CONSULTANT has not offered or received any kickbacks or inducements from any other contractor, supplier, manufacturer, or subcontractor in connection with CONSULTANT'S proposal; that CONSULTANT has not conferred with any public employee having official responsibility for this procurement transaction; and that CONSULTANT has not received any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, in connection with this proposal or procurement transaction, unless consideration of substantially equal or greater value was exchanged.

14. SEVERABILITY

If any part, term, or provision of this Agreement is found by a Court to be legally invalid or unenforceable, then such provision or portion thereof will be performed in accordance with applicable laws to the extent possible. The invalidity or unenforceability of any provision or portion of this Agreement or any contract document related to this Agreement will not affect the validity of any other provision or portion of this Agreement or any related contract document.

15. AGREEMENT CONSTRUED UNDER ALABAMA LAWS

The Agreement is deemed to be executed and performed in the State of Alabama and will be construed in accordance with the laws of the State of Alabama.

16. CONFLICT OF TERMS

If there is a conflict, discrepancy, or inconsistency between the language in this Agreement and the language in the CITY'S Request for Proposals (Exhibit A), the CONSULTANT'S Proposal (Exhibit B), or any other document or exhibit attached to this Agreement, the language in this Agreement will control.

17. ENTIRE UNDERSTANDING

This Agreement comprises the entire understanding between the parties and cannot be modified, altered, or amended, except in writing and signed by the parties.

18. TERM

The term of this Agreement will be from the date of execution through September 30, 2023, unless it is terminated earlier by either party pursuant to Section 10 of this Agreement. The term of this

Agreement may be extended upon the mutual consent of both parties in writing.

By signing below, each party executes this Agreement as of the date written below and agrees to all the terms and conditions contained herein.

CITY OF FOLEY


By:

Print Name: Ralph Hellmich

Title: Mayor

Date:

**BERRY, DUNN, MCNEIL & PARKER,
LLC dba BERRYDUNN**

By: 

Name: Seth Hedstrom

Title: Principal

Date: May 24, 2023