

STATE OF ALABAMA)
BALDWIN COUNTY)

Agreement for Professional Services

WITNESSETH:

THIS AGREEMENT made this ____ day of August, 2014, by and between the CITY OF FOLEY, ALABAMA ("CITY"), located at Foley City Hall, 407 East Laurel Avenue P.O. Box 1750, Foley, AL 36535, and LEHE PLANNING, LLC, ("Consultant"), located at 300 Century Park South, Suite 216, Birmingham, Alabama 35226.

WHEREAS, in response to the April 28 - 30, 2014 devastation caused by floods, tornadoes, straight winds, and severe storms in parts of Alabama, the Alabama Emergency Management Agency ("AEMA") will be accepting applications for eligible projects to be funded through the Federal Emergency Management Agency ("FEMA") Hazard Mitigation Grant Program ("HMGP"); and

WHEREAS, the City desires to apply for HMGP funds for the construction of a dual use First Responders Hurricane Safe Room and Interpretive Center at the Graham Creek Nature Preserve ("Project"); and

WHEREAS, the Consultant is capable of providing professional planning services required for developing the application ("Project Application") on behalf of the City to secure FEMA HMGP funds for the Project; and

WHEREAS, the City is in need of the services provided by the Consultant; and

WHEREAS, the City and the Consultant desire to enter into this Agreement under which the Consultant shall provide such services for the City as are set forth herein.

NOW THEREFORE, the parties hereby agree as follows:

1. DESCRIPTION OF SERVICES. The Consultant shall perform the following tasks, under the direction of the City Engineer for the City, as required for completion of the Project Application:

- a. Review most recent FEMA Hazard Mitigation Assistance ("HMA") grant guidance for project eligibility, funding capabilities, and other criteria.
- b. Participate in AEMA and FEMA grant meetings, consultations, and other coordination activities, as requested by the City.
- c. Prepare a Letter of Intent to be submitted to the AEMA by the City.

- d. Assist with the City's identification of the safe room participants by first responders and other potential critical and essential services personnel.
- e. Complete the entire HMGP application for submission to the AEMA, including the following application components:
 - 1) Compile application information (applicant information, references to the local plan, history of hazards, hazards/level of protection, etc);
 - 2) Prepare the project description;
 - 3) Prepare project location information (lat/long coordinates, population data, flood panels, tax maps, USGS quads, and photos);
 - 4) Prepare conceptual plans (site plan, floor plan, and cross sections) and detailed cost estimates certified by a registered architect;
 - 5) Complete generator data sheets and worksheets certified by a registered electrical engineer (retained by the City) for the required emergency backup power;
 - 6) Describe the proposed Emergency Operations and Maintenance Plans;
 - 7) Estimate eligible Pre-Award Costs;
 - 8) Perform a benefit/cost (B/C) analysis, using FEMA-approved methods, and prepare an economic analysis report of methodology and findings for submission with the Project Application;
 - 9) Assess potential in-kind services by the City to meet the required 25% grant award match and reduce its cash outlays, such as land value, construction oversight, and pre-award planning;
 - 10) Prepare scope of work and budget (summary budget and detailed cost estimates from architect, milestones, sources of local funds, and alternative actions considered);
 - 11) Prepare notices and obtain environmental concurrences from State and Federal agencies (Alabama Historical Commission, ADEM, U. S. Fish and Wildlife, and Corps of Engineers);
 - 12) Obtain applicant signatures and authorizations; and
 - 13) Transmit the package to the Alabama EMA on behalf of the City.
- f. Revise the Project Application, as required, and compile and submit additional information required by FEMA and AEMA reviewers in response to Requests for Information (RFI's);
- g. Coordinate the final grant award between the City and AEMA;
- h. Perform such other services required to submit the grant application and secure funding approval.

2. USE OF AGENTS OR ASSISTANTS. To the extent reasonably necessary to enable the Consultant to perform the duties under this Agreement, the Consultant is authorized to engage the services of any agents or assistants that the Consultant may deem proper and further to employ, engage, or retain the services of such other persons, businesses, or corporations to aid or assist the Consultant in the proper performance of the duties, as approved by the City. The provisions of this Agreement shall also bind such agents and assistants who perform services for the City under this Agreement. Specifically, the City authorizes the Consultant to engage the following firm for developing conceptual plans, certifications, and cost estimates for the Project:

Mark Burns Architecture

Mark Burns, AIA, Principal Architect
580 Indian Crest Drive
Indian Springs, AL 35124-3070

3. TIME FOR PERFORMANCE. Consultant shall complete the HMGP Project Application in time for the City's submission in advance of the Alabama EMA deadline. Time is of the essence for quick submission of the completed Project Application. Completion of all services occurs when the AEMA formally notifies the City of its grant award or denial.

4. PRE-AWARD COSTS. Costs incurred by the City after the HMGP application period opened after the May 2014 Presidential Disaster Declaration, but prior to the date of the grant award, will be identified as Pre-Award Costs. An estimate of Pre-Award Costs incurred by the City for Consultant charges and in-kind services will be included within the Project Application budget. Pre-Award Costs directly related to developing the applications may be funded through HMGP as funds are available. Such costs may be incurred, for example, to develop a Benefit Cost Analysis, to gather Environmental and Historic Preservation data, for preparing design specifications, or for meetings related to development and submission of HMGP Project Applications. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Pre-Award Costs will be identified as separate line items in the cost estimate of the Project Application. The Project Application will identify such Pre-award costs as non-Federal cost share or local match. The Consultant will develop a means with the City Engineer to maximize in-kind services that may be credited as Pre-Award Costs toward the required local match. The Consultant will provide instruction and guidance to the City staff assigned by the City Engineer to assist with the development of the Project Application.

5. PAYMENT AND EXPENSES. Fees and charges to the City shall be made in accordance with the following provisions:

- a. **Professional services fee.** As compensation for the above-described services, the City will pay the Consultant, a total fixed fee of \$6,000, based upon the following estimated amounts:

Lehe Planning	\$4,020
(based upon estimated	
\$3,300 - Principal 20 hr. @ \$165	
\$200 - Sr. HM Spec. 2 hr. @ \$100	
\$520 - Admin. Asst. 8 hr. @ \$65)	

Mark Burns Architecture	\$1,750
(based upon estimated	
\$1,750 - Arch. 14 hr. @ \$125)	

Total professional services fee	\$5,770
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The fixed professional services fee of \$5,770 is based upon the estimated hours and fees shown above to complete the HMGP application process for the dual use First Responders Hurricane Safe Room and Interpretive Center/

The professional services fee includes project development, benefit/cost feasibility studies, conceptual or preliminary architectural and engineering designs and cost estimates, completion of all application components, packaging and submission to the AEMA, obtaining environmental concurrences, monitoring application review and approval, responding to AEMA/FEMA requests for additional information, and assisting the Board with initiating grant awards.

All work will be documented as pre-award costs and be included in the application budget. Additional pre-award costs by the City staff and other fees paid would also be claimed in the applications. Approval of a grant with designated pre-award costs will qualify these expenses toward the required 25% local match.

Subcontractor fees are not marked up.

- b. **Travel expenses.** Travel expenses are for separate overnight trips for each individual. Additional trips will be charged accordingly, and fewer trips will be deducted.

Jim Lehe – one overnight trip		
Lodging (one night)	90	
Meals (2 days @ the GSA per diem rate of \$51)	102	
Mileage (500 miles @ the IRS rate of \$0.56)	<u>280</u>	
Subtotal, Jim Lehe Travel		\$ 472

Mark Burns – one overnight trip		
Lodging (one night)	90	
Meals (2 days @ the GSA per diem rate of \$51)	102	
Mileage (500 miles @ the IRS rate of \$0.56)	<u>280</u>	
Subtotal, Mark Burns Travel		<u>472</u>

Total estimated travel (two separate overnight trips)	<u>\$ 944</u>
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Travel expenses are for separate overnight trips for each individual. Additional trips will be charged accordingly, and fewer trips will be deducted.

Actual mileage will be charged the current IRS rate.

Per diem, as required, will be charged according to the current GSA schedule.

Lodging will be charged for the actual amount.

- c. **Miscellaneous reimbursable expenses.** Printing will be charged at actual costs or at the comparable market rate for in-house printing and postage will be charged at actual cost.
- d. **Total estimated charges.** Total charges for fees and expenses shall not exceed \$6,800, unless a higher amount is approved by the City as an amendment to this Agreement.
- e. **Payment.** Payment shall become due within 30 days of the date of an invoice to the City. The Consultant will bill the City 90% of the total professional services fee upon submission of the Project Application to the AEMA. The balance of the fee shall be payable upon completion (final FEMA action on the Project Application to approve or deny). Travel and miscellaneous expenses shall be billed as incurred.

7. TERM/TERMINATION. This Agreement shall terminate automatically upon completion by the Consultant of the services required by this Agreement. Services shall be deemed completed upon the AEMA final action to approve or deny the Project Applications. Either party may terminate this Agreement by giving at least 72 hours' notice. In the event of early termination by the City, the Consultant shall be paid for services and expenses incurred up to the termination date.

8. RELATIONSHIP OF PARTIES. It is understood by the parties that the Consultant is an independent contractor with respect to the City, and not an employee of the City. The City will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Consultant.

9. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

10. AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

11. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

10. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

11. EFFECTIVE DATE. This Agreement shall become effective upon its execution.

12. APPLICABLE LAW. The laws of the State of Alabama shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

CITY OF FOLEY, ALABAMA

BY: _____

ITS: Michael L. Thompson

City Administrator

ATTEST: _____

ITS: Vickey Southern

City Clerk

LEHE PLANNING, LLC

BY: _____

ITS: James E. Lehe

Manager