



City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 14-0458-RES

File Number: 14-0778

Enactment Number: 14-0458-RES

Consider Performance Agreement with Taking Off Hot Air Balloon Co.

WHEREAS, the Foley City Council has deemed entering into a Performance Contract with Taking Off Hot Air Balloon Co. a good and useful purpose of public funds in order to market the City of Foley to increase tourism and to stimulate the economy.

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

SECTION 1: Appropriates an additional \$45,000 to Tommy Rachel's contract and amends Account No. 01-620-3210 Contracts for Public Service.

SECTION 2: Authorizes the Mayor to enter into the five year Performance Contract with Taking Off Hot Air Balloon Co. as set forth in the attachment, which is made a permanent part of this Resolution upon its adoption.

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

PASSED, APPROVED AND ADOPTED this 20th day of October, 2014.

Aye: 4 President Trawick, Council Member Quaites, Council Member Hellmich and Council Member Blackwell

Abstain: 1 Council Member Ebert III

President's Signature

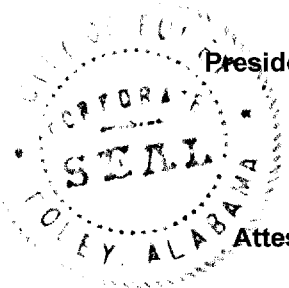
Date

10-22-14

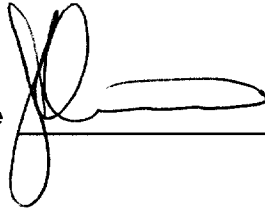
Attest by City Clerk

Date

10-22-14



Mayor's Signature

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line.

Date

10/22/14



STATE OF ALABAMA)
COUNTY OF BALDWIN)

PERFORMANCE CONTRACT

KNOW ALL MEN BY THESE PRESENTS that **The City of Foley**, a municipal corporation of the State of Alabama, hereinafter called the "City" and **Taking Off Hot Air Balloon Co.**, hereinafter called the "Contractor," on the 20th day of October, 2014, have contracted and agreed as follows:

WHEREAS, the City has found that it is a good and useful purpose of public funds to hire the Contractor as a representative of the City of Foley as follows:

1. To attend the Gonzales and the Natchez hot air balloon festivals annually for the purpose of marketing on behalf of the City of Foley, Alabama, and
2. To be the Balloon Meister at the Gulf Coast Hot Air Balloon Festival each year; and
3. To provide two (2) Glows per year for any local events chosen by the City; and
4. To procure a balloon envelope with the City's current logo affixed to one side of the envelope.

WHEREAS, the Contractor shall provide a properly trained balloon crew, shall provide professional public relations services when representing the City of Foley, and shall make recommendations on event attendance and local glows to Mrs. LaDonna Hinesley, Marketing Director of the City of Foley in order to properly advertise and market the City, and shall coordinate on promotional items with the Marketing Director, and

WHEREAS, the Contractor shall procure an enclosed trailer to transport the balloon and shall gain approval of the City Logo color and design on the balloon envelope and on the trailer from the City of Foley Marketing Director, and

WHEREAS the Contractor shall provide all necessary equipment and staff to properly operate the balloon at all times and shall be solely responsible for following Federal Aviation Administration regulations, with regards to weather minimums and altitude restrictions, as well as being the final authority as to the operation of the balloon, and

WHEREAS, the Contractor shall work with the City of Foley Marketing Director to secure any clothing articles deemed necessary to identify the crew as the "City of Foley Balloon Team" and shall notify the City and the proper authorities in the event that any additional clothing may be needed, and

WHEREAS, it is contemplated that there may be a need by the City to procure additional services from the Contractor that is above and beyond the volumes agreed to in the base Contract price, the Contractor therefore agrees to offer the following services at the below defined price; Glows \$900.00, Tethers \$1,500.00, Flights \$500, and

WHEREAS, this agreement only engages The City of Foley in a marketing and promotional agreement with the Contractor, and in no way creates any ownership of the balloon, the trailer, or related equipment by the City, and

WHEREAS the Contractor being the owner and operator of said balloon, accepts all responsibility for, and makes all decisions pertaining to, the safe operation of his balloon and the City accepts no responsibility of decisions made by the Contractor related to the operation and flight of the balloon.

NOW, THEREFORE, WITNESSETH: the City of Foley, for and in consideration of the herein agreed, the City enters into a contract to pay the Contractor, the total sum of \$110,000.00 payable in the amount as follows; \$60,000.00 upon approval of this contract and upon the ordering of the balloon by the Contractor, and \$10,000.00 per year at the start of each of the 5 years of this contract. In addition to the above, the City agrees to pay for the cost of the lettering on the new trailer purchased by the Contractor.

The Contractor in the performance of its operations and obligations hereunder, shall not be deemed to be the agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense, as the City may from time to time request, to indicate that it is an independent contractor. The City does not and will not assume any responsibility for the means by which or manner in which services by

the Contractor, provided for herein, are performed, but on the contrary, the Contractor shall be wholly responsible thereof.

The Contractor shall not transfer or assign this contract or the license or any of the rights or privileges granted herein without the prior written consent of the City.

The Contractor hereby agrees to comply strictly with all ordinances of the City of Foley, Alabama, and the laws of the State of Alabama while performing under the terms of this contract.

The Contractor agrees that upon violation of any of the covenants and agreements herein contained, on account of any act or omission or commission of the Contractor, the City may, at its option, terminate and cancel this contract.

The Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or disability.

The Contractor agrees and understands that the funding of this contract is solely provided from the General Fund of the City of Foley. If, at any time during the City's fiscal year, actual revenues of the City decrease below that amount which has been projected by the City to sustain the operating budget of the City, this contract may be declared null and void and no liability shall accrue to any party hereto. Notwithstanding any of the other provisions contained in this contract, the City of Foley shall maintain the right to terminate this contract upon proper notice, which shall be in writing and shall be provided to the Contractor at least thirty (30) days prior to the intended date of cancellation.

If any sections, subsection, sentence, clause, phrase, or portion of this contract is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

For the purpose of giving notice as provided for in this contract, the Contractor's address is declared to be:

Taking Off Hot Air Balloon Co
C/O Tommy Rachel
P. O. Box 113
Magnolia Springs, AL 36555

The City's address:

City of Foley
P. O. Box 1750
Foley AL 36536-1750

IN WITNESS WHEREOF, we have hereunto set out hands and seals on the day and year first written.

CITY OF FOLEY

ATTEST:

John E. Koniar, Mayor

Victoria Southern, CMC
City Clerk

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a notary public in and for said County in said State, hereby certify that John E. Koniar and Victoria Southern, whose names as Mayor and City Clerk of the City of Foley, respectively, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such city officials and with full authority executed the same voluntarily for and as an act of said municipality.

Given under my hand and official notarial seal on this the ____ day of _____ 2014.

(Affix Seal)

NOTARY PUBLIC

My Commission Expires: _____

Tommy Rachel

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned authority, A Notary Public in and for said County in said State, hereby certify that Tommy Rachel, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official notarial seal on this the ____ day of _____, 2014.

(Affix Seal)

NOTARY PUBLIC

My Commission Expires: _____