



COUNTY OF BALDWIN)
STATE OF ALABAMA)

PERFORMANCE CONTRACT

KNOW ALL MEN BY THESE PRESENT, that **The City of Foley**, a municipal corporation of the State of Alabama, hereinafter called the "City", and the **South Baldwin Chamber of Commerce**, hereinafter called the "Contractor", on the **1st day of October, 2018**, have contracted and agreed as follows:

WHEREAS, by entering into this contract the Contractor would in turn create new attractions to draw larger crowds from the travel market area while continuing to highlight the heritage of the community through events such as the Alabama Festival of Flavor (hereinafter called the "Festival") in an effort to provide cultural education to Foley's citizens and visitors; and

WHEREAS, pending a successful partnership with the Festival event the City and Contractor will move into discussion regarding management of other City events such as Foley Farmer's Market in conjunction with Music and A Movie, Christmas in the Park, Let it Snow and Uptown Halloween that will be negotiated under separate contract; and

WHEREAS, the Contractor will recruit a broad volunteer base to assist with the production of the events garnering more community involvement; and

WHEREAS, by entering into this contract it will allow the City to focus less on event planning and more on City Marketing efforts; and

WHEREAS, the Contractor will gather, keep updated, research and distribute information and data to be used as advertisements and presentations to general prospects; and

WHEREAS, the Contractor will take the necessary steps to manage, market and promote the Festival; and

Whereas, the Contractor will maintain contact, cooperate and work closely with the City, agencies and organizations with similar purposes as deemed necessary to promote the Festival; and

Whereas, the Contractor's program is clearly a public service, which has been offered to the City on a continuing basis and the City desires to engage the Contractor to provide these services; and

NOW, THEREFORE, WITNESSETH, that the City, for and in consideration of the covenants and agreements hereinafter set out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum total of \$20,000.00 (**TWENTY THOUSAND DOLLARS**), for a one-time payment on or before January 1, 2019.

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that it shall be totally responsible for, and shall have exclusive control over the management and disbursement of all such monies received from the City.

In order to provide the highest quality chamber of commerce programs for the community, the Contractor agrees to:

1. Structure its events and activities in such a manner as to give the general public and its members, the opportunity to participate in a wide variety of community development and enhancement activities.
2. Provide adequate leadership, guidance, direction and programs in promoting the local community.
3. Be solely responsible, through the South Baldwin Chamber of Commerce, for providing supervision at the Festival.
4. When requested by the City, render to the City an accounting of all sums received such as sponsorships, donation of goods, services, etc. and disbursed in connection with project undertaken.
5. The Contractor will have the right to explore, implement and receive the benefit of new revenue generating streams and will continue to maintain the Festival as a free event for the public.

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The City agrees to the following: This info may no longer be needed as this has happened.

1. Provide in-kind services for the events similar to what is currently provided for the Chamber's Annual Balloon Festival, but event management, marketing, sponsorship oversight, naming, content selection, and related functions, are the responsibility of the Contractor.
2. Transfer to the Contractor the following items associated with the Festival; all information concerning the production of the Festival, including: vendor lists, entertainers, volunteers, sponsors, advertisers and general production information. The City will also transfer ownership of the Festival website, physical assets, such as, signs, structures (excluding the Miss Foley) and

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Festival supplies to the Chamber in an appropriate timeframe agreeable to both parties. If the Contractor cancels the contract, the Contractor will transfer ownership back to the City the above items listed associated with the Festival including the Festival website, physical assets, etc.

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3. Continue to provide assistance in securing past Festival sponsors, on an as needed basis and will directly transfer all Festival sponsor funds within two business days after receiving the funds to the Chamber.

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The Contractor shall provide to the City of Foley Finance Division a financial report upon completion of this contract with copies to the City Administrator and shall provide such other reports as may reasonably be required by the above designated city representatives. Additionally, the Contractor shall at all reasonable times and places permit an audit of its books and records by duly authorized representatives of the City. The Contractor shall maintain clear evidence of the expenditure of all funds requested in its proposal.

Notwithstanding any of the provisions of this Contract, it is agreed that the City has no financial interest in the business of the Contractor, and shall not be liable for any debts or obligations incurred by the Contractor, nor shall the City be deemed or construed to be a partner, joint venture or otherwise interested in the assets of the Contractor, and the Contractor shall not, at any time or times, use the name or credit of the City in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.

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. If such cancelation occurs, the Contractor will not be required to refund the contract fee or sponsorship money.

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.

CANCELLATION CLAUSE

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 and the Contractor will not be required to refund the contract fee or sponsorship money.

As managers of the Festival, the Contractor reserves the right to cancel the contract. Upon completion of the Festival, the Contractor will have a 45 day window in which to cancel the contract. This time frame is prior to receiving any funding from the City for the next year's Festival and the Contractor would offer the same consideration to the City as outlined in #2 under City's agreement.

If the Festival is canceled by the Contractor, City, County or any other regulatory organization, or by acts of God, the Contractor will not be required to refund the management contract fee or be required to reschedule the event. After the first year the City and the Contractor will have the opportunity to review this contract and make changes as deemed necessary for the Festival.

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.

By signing this contract, the South Baldwin Chamber of Commerce represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

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

Donna Watts, President/CEO
South Baldwin Chamber of Commerce
Post Office Box 1117
Foley, Alabama 36536-1117