

**RESOLUTION NO. 13-046**

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Mayor is authorized to execute on behalf of the City the attached Consulting Services agreement with Hoar Program Management for construction management on the Depot TE Project.

Adopted this 4<sup>th</sup> day of March, 2013.

February 8th, 2013

City of Decatur  
Community Development Department  
Attn: Allen Stover  
402 Lee St. NE  
Decatur, AL 35601

RE: L&N Railroad Depot Restoration  
HPM Proposal for Lead Based Paint Abatement/Renovation Preconstruction Services

Mr. Stover,

The content of this letter addresses the Program Management services for the preconstruction and construction phase of work for the L&N Railroad Depot Restoration lead based paint abatement and also preconstruction services for the renovation portion of the Depot as defined in the Master Services Agreement dated February 8<sup>th</sup>, 2013 and forthcoming.

With this we have included necessary preconstruction personnel to provide a cost for the lead based paint abatement as well as the renovation project and a project manager who will spend 16 hours a week on and off site to aid in the coordination of the project and attend weekly owner/architect/contractor meetings once construction begins. Also a field coordinator for the project is included who will make one half day site visit a week once abatement begins.

The cost of our services is based on a 3 month time frame. Our Program Management Proposal is for \$7,100 per month for a total contract amount of \$21,300 for the three month period from February 1<sup>st</sup>, 2013 through April 30<sup>th</sup>, 2013.

We appreciate your consideration of this request. Please contact me if I can be of any help in communicating our services to the Decatur City Council. The Master Services Agreement defining the scope, time frame, and cost will be forthcoming next week. As discussed, my intent was to get you this cost information quickly for your review. We at HPM look forward to working with you on this project.

Sincerely,



Chad Wilson  
Senior Program Manager  
Hoar Program Management

Copy:

Mike Lanier, HPM  
Jason Abernathy, HPM  
Andy Bernard, HPM  
File

STATE OF ALABAMA    )  
                                  )  
COUNTY OF MORGAN    )

**MASTER SERVICES AGREEMENT  
L&N RAILROAD ACQUISITION AND  
RESTORATION PROJECT**

This **AGREEMENT** is made and entered into by and between the **City of Decatur, Alabama, a Municipal Corporation**, hereinafter referred to as **THE CITY** or **CITY**, and **Hoar Program Management, a Division of Hoar Construction, LLC**, which is qualified to do business in the State of Alabama, and has its principal Alabama office at **2 Metroplex Drive, Suite 300, Birmingham, AL 35209**, hereinafter referred to as the **PROGRAM MANAGER**, or **PM**.

**ARTICLE 1: SERVICES AND OTHER DEFINITION**

1.1           **“Services”** and **“Work”** are synonymous for purposes of this Contract and mean **Program Management Services** for the **L&N Railroad Depot Acquisition and Restoration Project**, hereinafter referred to as **The Project**.

1.2           **“Program”** means the various Projects undertaken and underway from time to time by **City** in regard to its various properties. It does not include any capital improvement project of **City** for which an Agreement or Amendment to this Agreement has not been executed by **City** and **PM**. Execution of this Contract does not obligate **City** to use **PM** in connection with any capital improvement project.

1.3           **“Designer”** refers to **Underwood Associates Architect** which is not a party to this Agreement although it is providing design work to the **City** for the **Project**, and any successor to them chosen by the **CITY** for any reason while this Agreement remains in effect.

1.4           **“Phase I”** refers to the time commencing with the initial involvement in the **Project** by **PM** and concludes at the point Authorization is received from the Alabama Department of Transportation to move forward with the Restoration Phase of the **Project**. While work done during Phase I may have an impact or effect on other Phases, all references herein apply to Phase I and a separate Agreement is contemplated between the parties for any other Phase. It

is understood that should Authorization not be received from the Alabama Department of Transportation, or should the City elect not to proceed with the Project, no further Agreement or work will be undertaken. All references to Pre-Design, Design, Pre-Construction, Construction and Post- Construction and any other reference to the Project within this document refers to **Phase I** of the **Project** unless specifically stated to the contrary.

## **ARTICLE 2: RELATIONSHIP OF THE PARTIES**

### **2.1 CITY AND PROGRAM MANAGER**

**2.1.1 Relationship: Program Manager** shall be **City's** principal agent in providing Program Management and **City's** Representative Services described in this Contract. **PM** and **City** 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 CITY AND DESIGNER.**

**2.2.1 City-Designer Agreement: City** has entered into a separate agreement, the "City-Designer Agreement," with **Designer** to provide for the design of any **Project** related to the **Program** and certain design-related services during the **Project**.

**2.2.2 Changes: City** shall not modify the Agreement with the **Designer** in any way that is prejudicial to **PM**. If **City** terminates **Designer's** services, changes **Designers** or modifies the scope of work with the initial **Designer** or any subsequent **Designer**, **PM** shall be informed of the change in a timely manner. Any change in **PM's** work necessitated by the change shall be compensated by the **City** pursuant to the terms of this Contract.

### **2.3 CITY AND PRIME CONTRACTORS:**

**2.3.1 Construction Contract: City** 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 **City's** Representative Services described in this Contract, **PM** shall endeavor to maintain, on behalf of **City**, a good 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:**

**3.1.1 Basic Services:** **PM** shall perform the Basic Services described in this Article. It is not required that the services be performed in the order in which they are described.

**3.2 Pre-Design Phase:** It is understood by the parties that much of the design work has already been completed by **Designer**. "Pre-Design" work to be done by **PM** will be for modification and implementation of this design as needed.

#### **3.2.1 Cost Management:**

**3.2.1.1 Budget:** Based on the Management Plan, **PM** shall prepare a preliminary budget ("Budget") based on the separate divisions of the work required for the Project. **PM** shall review the budget with **City** and **Designer** and **PM** shall submit the Budget to **City** for acceptance. The Budget shall be revised by **PM** only as directed by **City**.

**3.2.1.2 Cost Analysis:** **PM** shall analyze and report to **City** and **Designer** the estimated cost of various design and construction alternatives. As a part of the cost analysis, **PM** shall consider costs related to efficiency, usable life, maintenance, energy and operation.

**3.2.1.3 Budget and Cost Analysis Responsibility:** The parties agree that the Budget and Cost Analysis are estimates for use by **City** and that **PM** shall not be liable to **City** for any inaccuracies except in the case of willful misrepresentation.

#### **3.2.2 Information Systems:**

**3.2.2.1 Design Phase Procedures:** The Information System shall include procedures for reporting, communications and administration during the Design Phase.

### **3.3 Design Phase:**

#### **3.3.1 Program Management:**

**3.3.1.1 Review of Design Documents:** **PM** shall review the design documents and make recommendations to **City** and **Designer** as to constructability, scheduling, and time of construction; as to clarity, consistency,

and coordination of documentation among Prime Contractors; and as to the separation of the **Project** into contracts for various categories of the work. The recommendations resulting from such review shall be provided to **City** and **Designer** in writing or as notations on the design documents. In making reviews and recommendations as to design documentation or design matters **PM** shall not be responsible for providing nor will **PM** have control over the **Project** design, design requirements, design criteria or the substance or contents of the design documents. By performing these reviews and making recommendations, **PM** shall not assume responsibility for or be responsible or liable, in whole or in part, for any aspect of the project design, design requirements, design criteria or the design documents. **PM's** actions in making such reviews and recommendations as provided herein are to be advisory only to **City** and to **Designer**.

**3.3.1.2 Approvals by Regulatory Agencies:** **PM** shall coordinate transmittal of documents to regulatory agencies for review and shall advise **City** and **Designer** of potential problems and suggested solutions regarding completion of such reviews.

**3.3.1.3 Other Contract Conditions:** **PM** shall review the General and Supplemental Conditions for the construction contracts and for materials or equipment procurement contracts for the **Project**, and shall provide them to **Designer** for inclusion in the Design Documents.

**3.3.1.4 Project Funding:** **PM** shall assist **City** in preparing documents concerning the Budget for use in obtaining or reporting on **Project** funding. The documents shall be prepared in a format approved by **City**.

**3.3.2 Time Management:**

**3.3.2.1 Pre-Bid Construction Schedules:** Prior to transmitting Contract Documents to bidders, **PM** shall prepare a Pre-Bid Construction Schedule for each part of the **Project** and make the schedule available to the bidders during the Bid and Award Phase.

**3.3.3 Cost Management:**

**3.3.3.1 Cost Control:** **PM** shall prepare an estimate of the construction cost for each portion of the **Project** that will be submitted for proposals or bids by potential Prime Contractors, and shall as appropriate include such estimates in the Budget. Each such estimate shall include a contingency acceptable to **City**, **PM** and **Designer** for construction costs appropriate for the type and location of the **Project** and the extent to which the design has progressed. The estimate for each such portion of the **Project** shall be accompanied by a report to **City** and **Designer** identifying variances from the Budget. **PM** shall facilitate decisions by **City** and **Designer** when changes to the design are required to remain within the Budget. **City** recognizes that **PM** will perform in accordance with the Standard of Service established in this Contract and that **PM** has no control over the costs of labor, materials, equipment or services furnished by others, or over Prime Contractor's methods of determining

prices, or over competitive bidding or market prices. Accordingly, **PM** does not guarantee that proposals, bids or actual construction costs will not vary from such estimates as amended from time to time. If an estimate is exceeded **City** will give written consent to increasing the Budget, or authorize negotiations or rebidding of the **Project** within a reasonable time, or cooperate with **PM** and **Designer** to revise the **Project's** general scope, extent or character in keeping with the **Project's** design requirements and sound design practices, or modify the design requirements appropriately. **City** reserves the right to abandon the **Project** and terminate this Contract in accordance with Article 10.

**3.3.3.2 Budget Revision:** **PM** shall make recommendations to **City** concerning revisions to the Budget that may result from design changes.

**3.3.3.3 Value Engineering Studies:** **PM** shall provide value engineering studies on major construction components. The results of these studies shall be in report form and shall be distributed to **City** and **Designer**.

**3.4 Bid and Award Phase:**

**3.4.1 Program Management:**

**3.4.1.1 Prequalifying Bidders:** **PM** shall assist **City** in developing lists of possible proposers or bidders and in prequalifying proposers or bidders. This service shall include preparation and distribution of questionnaires; receiving and analyzing completed questionnaires; interviewing possible proposers or bidders, bonding agents and financial institutions; and preparing recommendations for **City**. **PM** shall prepare a list of proposers or bidders for each bid package.

**3.4.1.2 Construction Contracts:** **PM** shall assist **City** in the assembly, delivery and execution of the Contract Documents. **PM** shall issue to Prime Contractor on behalf of **City** the Notice of Award and the Notice to Proceed.

**3.4.2 Time Management:**

**3.4.2.1 Pre-bid Construction Schedule:** **PM** shall emphasize to the proposers or bidders their responsibilities regarding the Pre-bid Construction Schedule specified in the instructions to proposers or bidders or the Contract Documents.

**3.4.3 Cost Management:**

**3.4.3.1 Estimates for Addenda:** **PM** shall prepare an estimate of costs for all Addenda and shall submit a copy of the estimate to **Designer** and to **City** for approval.

**3.4.3.2 Analyzing Bids:** Upon receipt of the proposals or bids, **PM** shall evaluate the bids for responsiveness and pricing, including alternate bid

prices and unit prices, and shall make a recommendation to **City** regarding the award of the construction contract.

### **3.5        Construction Phase:**

#### **3.5.1        Program Management:**

**3.5.1.1        Pre-Construction Conference:** In consultation with **City** and **Designer**, **PM** shall conduct a Pre-Construction Conference with each Prime Contractor during which **PM** shall review the **Project** staffing, scheduling reporting procedures, rules, and other pertinent issues.

**3.5.1.2        Permits, Bonds and Insurance:** **PM** shall verify that the required permits, bonds, and insurance, have been obtained. Such action by **PM** shall not relieve Prime Contractor of its responsibility to comply with the provisions of the Contract Documents.

**3.5.1.3        Construction Administration Procedures:** **PM** shall establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents; shop drawings, samples and other submittals; schedule adjustments; change order proposals; written proposals for substitutions; payment applications; and the maintenance of logs. As **City's** representative, **PM** shall be the party to whom all such information shall be submitted on behalf of the **City**.

**3.5.1.4        Project Site Meetings:** **PM** shall conduct periodic meetings at the **Project** site with each Prime Contractor, and as appropriate shall conduct coordination meetings with Prime Contractors, **City** and **Designer**. **PM** shall insure minutes are taken and distributed accordingly by the Design Team to appropriate parties.

**3.5.1.5        Coordination of Other Independent Consultants:** Technical inspection and testing provided by others shall be coordinated by **PM**. **PM** shall receive a copy of all inspection and testing reports and shall provide a copy of such reports to **Designer**. **PM** shall not be responsible for providing, nor shall **PM** control, the performance of technical inspection and testing. **PM** is performing a coordination function only and **PM** is not acting in a manner so as to assume responsibility or to be responsible or be liable, in whole or in part, for all or any part of such inspection and testing.

**3.5.1.6        Change Orders:** **PM** shall establish and implement a change order control system. The parties intend that changes to the Contract between **City** and Prime Contractor can only be accomplished by written change orders executed by **City**.

**3.5.1.7.1** All proposed **City**-initiated changes should first be described by **Designer** in a request for a proposal issued to Prime Contractor. As appropriate the request shall be accompanied by drawings and specifications prepared by **Designer**. In response to the request for a proposal, Prime



Contractor shall submit to **PM** and **Designer** for evaluation necessary information concerning the price and time adjustments, if any, as may be necessary to perform the proposed change order work. **PM** and **Designer** shall review Prime Contractor's proposal, as appropriate shall discuss the proposed change order with Prime Contractor, and make recommendations to **City**.

**3.5.1.7.2 PM** shall review the contents of all Prime Contractor-requested changes to the Contract Time or Price, endeavor to determine the cause of the request, and assemble and evaluate information concerning the request. **PM** shall provide to **Designer** a copy of each change request including any **PM** comments, and **PM** shall in its evaluations of Prime Contractor's request consider **Designer's** comments regarding the proposed changes, and based on such evaluations make recommendations to **City**.

**3.5.1.7.3 PM** shall make recommendations to **City** regarding all proposed change orders. At **City's** direction, **PM** shall insure that the **Designer** prepares and issues to Prime Contractor appropriate change order documents.

**3.5.1.8 Quality Review:** **PM** shall reject any portion of the work and transmit to **City** and Prime Contractor a notice of nonconforming work when it is the opinion of **PM**, **City**, or **Designer** that such work does not conform to the requirements of the Contract Documents. **PM** is not authorized to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the work not conforming with the requirements of the Contract Documents. Communication between **PM** and Prime Contractor with regard to Quality Review shall not in any way be construed as binding **PM** or **City** or releasing Prime Contractor from performing in accordance with the terms of the Contract Documents. **PM** will not be responsible for, nor does **PM** control, the means, methods, techniques, sequences and procedures of construction for the **Project**. It is understood that **PM's** action in providing Quality Review as stated herein is a service to **City** and by performing as provided herein, **PM** is not acting in a manner so as to assume responsibility for, or to be responsible or liable, in whole or in part, for all or any part of the construction for the **Project**. No action taken by **PM** shall relieve Prime Contractor from its obligation to perform the work in strict conformity with the requirements of the Contract Documents, and in strict conformity with all other applicable laws, rules and regulations.

**3.5.1.9 Prime Contractor's Safety Program:** **PM** will verify that the Prime Contractor has an in place safety program to be utilized for the Prime Contractors execution of work. **PM** shall not be responsible for any Prime Contractor's implementation of or compliance with its safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith, or for the coordination of any of the above with the other Prime Contractors performing the work at the site. **PM** shall not be responsible for the adequacy or completeness of any Prime Contractor's safety programs, procedures or precautions.

**3.5.1.10 Disputes Between Prime Contractor and City:** **PM** shall render in writing within a reasonable time opinions concerning disputes between Prime Contractor and **City** relating to the acceptability of the work, or the interpretation of the requirements of the Contract Documents pertaining to the furnishing and performing of the work.

**3.5.1.11 Substantial Completion:** As appropriate, **PM**, in consultation with **Designer**, shall review the work and recommend to **City** when the **Project** and Prime Contractor's work is substantially complete. In consultation with **Designer**, **PM** shall, prior to insuring the **Designer** issue a Certificate of Substantial Completion, also insure the **Designer** prepares a list of incomplete work or work which does not conform to the requirements of the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.

**3.5.1.12 Final Completion:** In consultation with **Designer**, **PM** shall determine when the **Project** and Prime Contractor's work is finally completed, shall insure that the **Designer** issues a Certificate of Final Completion and shall provide to **City** a written recommendation regarding payment to Prime Contractor.

### **3.5.2 Time Management:**

**3.5.2.1 Prime Contractor's Construction Schedule:** **PM** shall review each Prime Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents.

**3.5.2.3 Effect of Change Orders on the Schedule:** Prior to the issuance of a change order, **PM** shall determine and advise **City** as to the affect on the Contractor's Schedule of the change. **PM** shall verify that activities and adjustments of time, if any, required by approved change orders have been incorporated into Prime Contractor's Construction Schedule.

### **3.5.3 Cost Management:**

**3.5.3.1 Effect of Change Orders on Cost:** **PM** shall advise **City** as to the effect on the Budget of all proposed and approved change orders.

**3.5.3.2 Progress Payments:** **PM** shall review the payment applications submitted by Prime Contractor and determine whether the amount requested reflects the progress of Prime Contractor's work. **PM** shall make appropriate adjustments to each payment application and shall prepare and forward to **City** a Progress Payment Report. The Report shall state the total Contract Price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this Report shall be a Certificate of Payment that shall be signed by **PM** and delivered to **City**.

**3.6 Post-Construction Phase:**

**3.6.1 Cost Management:**

**3.6.3.1 Change Orders:** **PM** shall continue during the Post-Construction Phase to provide services related to change orders as specified in Paragraph 3.5.3.2.

**ARTICLE 4: ADDITIONAL SERVICES**

**4.1** At the request of **City**, **PM** shall perform Additional Services and **PM** shall be compensated for same as provided in Article 8 of this Contract. **PM** shall perform Additional Services only after **City** and **PM** have executed a written Amendment to this Contract providing such services. Additional Services may include:

**4.1.1** Services related to **Project** financial feasibility study (ies); building site investigations and analysis;

**4.1.2** Services related to determination of space needs or preparation of space programs;

**4.1.3** Services related to investigation, appraisal or evaluation of surface or subsurface conditions at or contiguous to the site, or other existing conditions, facilities, or equipment that differs from what is indicated in the Contract Documents, or determination of the accuracy of existing drawings or other information furnished by **City**;

**4.1.4** Services related to the procurement, storage, maintenance and installation of City-furnished equipment, materials, supplies and furnishings;

**4.1.5** Services related to tenant or rental spaces;

**4.1.6** Preparation of financial, accounting or Information Systems reports not provided under Basic Services;

**4.1.7** Preparation of an Operations and Maintenance Manual;

**4.1.8** Services related to recruiting and training of maintenance personnel;

**4.1.9** Services provided in respect of a dispute between **City** and Prime Contractor(s) after **PM** has rendered its opinion thereon in accordance with Paragraph 3.5.1.13;

**4.1.10** Performing warranty inspections during the warranty period of the **Project**;

**4.1.11** Consultation regarding replacement of work or property damaged by fire or other cause during construction and furnishing services in connection with the replacement of such;

**4.1.12** Services made necessary by the default of Prime Contractor;

**4.1.13** Preparation for and serving as a witness in connection with any public or private hearing or arbitration, mediation or legal proceeding;

**4.1.14** Assisting **City** in public relations activities, including preparing information for and attending public meetings; and

**4.1.15** Assisting **City** with procurement and preparation of contracts in connection with the occupancy of the **Project**, and providing personnel to oversee the location of furniture and equipment.

**4.1.16** Services related to the initial operation of any equipment such as start-up, testing, adjusting and balancing.

**4.1.17** Feasibility Study (ies) for new buildings or renovation of other buildings not listed in the Program.

**4.1.18** Services related to additional buildings or renovation added to Program.

**4.1.19** Project Management staffing of individual jobs in the Program.

## **ARTICLE 5: DURATION OF MASTER SERVICE AGREEMENT**

**5.1** The commencement date for The Master Service Agreement shall be February 1, 2013.

**5.2** The duration of The Master Services Agreement under this Contract shall be the conclusion of Phase I defined elsewhere in this Agreement as the date on which Authorization to Proceed is received from the Alabama Department of Transportation and the Construction Phase of the Project begins.

**5.3** The duration of The Master Service Agreement may be changed only as specified in Article 6.

## **ARTICLE 6: CHANGES TO MASTER SERVICE AGREEMENT TERMS AND CONDITIONS**

### **6.1 CITY CHANGES:**

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

**6.1.2** 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 **City** 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 8.

### **6.2 AUTHORIZATION:**

**6.2.1** 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 **City** and **PM**. The amendment shall be executed by **City** and **PM** prior to **PM's** performing the services required by the amendment.

**6.2.2** **PM** shall proceed to perform the services required by the amendment only after receiving written notice from **City** directing **PM** to proceed.

### **6.3 INVOICES FOR ADDITIONAL COMPENSATION:**

**6.3.1** **PM** shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 8 of this Contract.

## **ARTICLE 7: CITY'S RESPONSIBILITIES**

**7.1** **City** shall provide to **PM** complete information regarding **City's** knowledge of and requirements for the **Program**. **City** 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 **City** in performing services under this Contract and on the reports, data, and other information furnished by **City** to **Designer**.

**7.2** **City** shall be responsible for the abatement at the site of any asbestos, PCB's, petroleum, radioactive materials and other hazardous materials, and the consequences of such abatement.

**7.3** **City** shall promptly review all reports, requests and information submitted by **PM** and as appropriate shall respond or render decisions pertaining promptly. **City's** responses and decisions are critical to the Program Schedule and, accordingly, **City** 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**.

**7.4** **City** shall furnish its own legal and accounting services as may be necessary for the **Program**.

**7.5** **City** shall furnish insurance for the **Program** as specified in Article 8.

**7.6** If **City** 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, **City** shall give prompt written notice thereof to **PM**.

**7.7** **City** has retained a **Designer** whose services, duties and responsibilities are described in a written agreement between **City** and **Designer**. The services, duties and responsibilities set out in the Agreement between **City** and **Designer** are compatible and consistent with this Contract and the Contract Documents. **City** requires 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**.

**7.8** **City** shall cause any and all agreements between **City** 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 **City's** agent in providing the **Program Manager's** Basic and Additional Services specified in this Contract, but not its Agent for other purposes.

**7.9** **City** 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.

**7.10** The parties stipulate that the Agreement is duly authorized by the approval of the City Council of Decatur, Alabama, in compliance with the applicable laws and that no further proof of financial ability of the **City** is required.

**7.11** **City** 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**, **City**

shall require that Prime Contractors submit all notices and communications relating to the **Project** directly to **PM**.

**7.12** **City** shall designate in writing an officer, employee or other authorized representatives to act in **City'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.

**7.13** **City** shall make payments to Consultants and Vendors recommended by **PM** on the basis of Consultant and Vendor's applications for payment if such are in compliance with the authorization of the City Council.

## **ARTICLE 8: CONTRACT PRICE AND PAYMENT**

**8.1** **Basis for Contract Price:** Unless provided otherwise, the basis for the contract price to be paid **PM** for services shall be as follows: Monthly rate of \$7100.00 for three months including direct expenses.

**8.2** **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 reimbursed the amount of the invoice.

**8.3** **Payments:** Payments shall be made not later than forty five (45) days after presentation of **PM's** invoice to **City**, as follows:

**8.3.1** Payment of the Contract Price as indicated in Paragraph 8.1 shall be in three equal payments during the **Program Manager's** Services, the final payment to be made when the Service under this Contract is complete. The duration shall be as set out in Article 4;

**8.3.2** Payment of engineer, architect and consultant services approved and authorized by the **City** shall be in amounts equal to the invoice in receipt by **PM** for the billing period;

**8.3.3** **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 8.1 in an amount that is mutually agreeable between **City** and **PM**.

**8.3.4** Payments due **PM** that are unpaid for more than forty-five (45) days from date of **PM's** invoice shall bear interest at the rate of one percent (1%) per month from the due date. If **City** fails to make payment due within forty-five (45) days from the Payment Date, **PM** may, after giving seven (7) days'

written notice to **City**, suspend services under this Contract until **PM** has been paid in full all amounts due for services, expenses and Additional Sources.

## **ARTICLE 9: INSURANCE AND MUTUAL INDEMNITY**

### **9.1 Program Manager Insurance:**

**9.1.1** **PM** shall purchase and maintain insurance to cover the following:

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

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

**9.1.1.3** 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;

**9.1.1.4** Claims for damages because of injury to or destruction of tangible property, including loss of use there from to the extent that it arises out of **PM's** negligence; or

**9.1.1.5** 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.

**9.1.2** Program Manager's Comprehensive General and Automobile Liability Insurance.

**9.1.3** 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.

**9.1.4** The foregoing policies shall be written for not less than the limits set out in **Attachment B** to this contract 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 **City** and shall include the **City** as an additional insured under the policies. Certificates of insurance showing such coverage to be in force shall be filed with **City** prior to commencement of **PM's** services.



## **9.2 City's Insurance:**

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

## **9.3 Notices and Recovery:**

**9.3.1** **PM** shall provide the **City** with copies of all policies thus obtaining for the **Program**. **PM** shall provide the **City** thirty (30) days written notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

## **9.4 Waiver of Subrogation:**

**9.4.1** **City** 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. **City** and **PM** shall each require similar waivers from their Prime Contractors, consultants and agents.

## **9.5 Indemnity:**

**9.5.1** **PM** hereby agrees to indemnify and hold harmless **City**, 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 shall not exceed the amount of the total compensation actually paid to **PM** by **City** pursuant to this Contract.

## **ARTICLE 10: TERMINATION AND SUSPENSION**

### **10.1 Termination by City for Convenience:**

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

**10.1.1.1 Payment Due PM:** If the **Program** is canceled or indefinitely deferred and this Contract is terminated by **City**, **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:

**10.1.2 Termination by City For Cause:** **City** may terminate **PM** (i) for cause if **PM** has materially failed to perform its duties and obligations under this Contract and if **City** 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 **City** giving fourteen (14) days' written notice.

**10.1.2.1** **PM** shall be due the amounts set out in Section 10.1.1.1.

**10.2 Termination by PM:**

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

**10.2.1** In such event **PM** shall be paid consistent with Paragraph 10.1.1.

**ARTICLE 11: DISPUTE RESOLUTION**

**11.1** **City** 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 11.2; 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 11.2.

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

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

**11.2.1** 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 Morgan County in the State of Alabama, that the agreement to arbitrate, and any award of the arbitrator(s) shall be specifically enforceable in Morgan County in the State of Alabama by any court having jurisdiction.

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

**11.2.3** 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 11.1. 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.

**11.2.4** 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.

**11.2.5** 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.

**11.2.6** 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.

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

## **ARTICLE 12: ADDITIONAL PROVISIONS**

**12.1** **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 **City**, **PM** agrees to keep all information concerning the **Program** confidential.

**12.2      Limitation and Assignment** – Neither the **City** 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 **City**, assign accounts receivable to a commercial bank or other financial institution for securing loans. In the event of an assignment by **City**, **City** agrees that it shall remain liable for payments due to **PM** under this Contract in the event the assignee fails to make such payments.

**12.3      Governing Law** – This Contract shall, unless otherwise provided, be governed by the law of the State Alabama.

**12.4      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 **City** and **PM**. Nothing contained in this Contract is intended to benefit any third party.

**12.5      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.

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

**12.7      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 City:  
Allen Stover, City of Decatur  
402 Lee Street NE  
Decatur, AL 35601  
E-mail: agstover@decatur-al.gov

To Program Manager:  
Mike Lanier, Hoar Program Management  
Two Metroplex Drive Suite 300  
Birmingham, AL 35209  
Fax #: 205-423-2323  
E-Mail: lanier@hoarpm.com

**12.8      Exhibit A – Certificate of Insurance**  
**Exhibit B – Limits of Liability**

**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 below.

**CITY OF DECATUR**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Don Kyle, Mayor

ATTEST:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stacy Gilley, City Clerk

**HOAR PROGRAM MANAGEMENT**

\_\_\_\_\_  
Date

\_\_\_\_\_

Title: \_\_\_\_\_