

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 2/28/2013

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Agreement with Brasfield & Gorrie, L.L.C.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with Brasfield & Gorrie, L.L.C. for Project Management Services for Redstone Gateway Package I and Package J, Project No. 65-13-SP20

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Contract is for Project Management Services for Redstone Gateway construction activities. Project Management services are a required element of the agreement between the City and the Developer, LW Redstone, and are funded with TIF revenues. Project Management services in a Not to Exceed (NTE) total contract amount of \$112,310.00. Account No. 05-6500-0511-1012

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: [Signature]

Date: 2/25/13

revised 3/12/2012
Ch 2-26-13

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **2/28/2013**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Project Management & Construction Admin Services**

Document Name: **Redstone Gateway Phase I Packages I and J Project No. 65-13-SP20**

City Obligation Amount: **\$112,310.00**

Total Project Budget: **\$112,310.00**

Uncommitted Account Balance: **0**

Account Number: **05-6500-0511-1012**

Procurement Agreements

| | |
|------------------------------|------------------------------|
| <u>Not Applicable</u> | <u>Not Applicable</u> |
|------------------------------|------------------------------|

Grant-Funded Agreements

| | |
|------------------------------|--------------------|
| <u>Not Applicable</u> | Grant Name: |
|------------------------------|--------------------|

| Department | Signature | Date |
|---|---------------------|---------|
| 1) Originating | <i>K. H. Mark</i> | 2/25/13 |
| 2) Legal | <i>W. G. Carter</i> | 2/26/13 |
| 3) Finance | <i>[Signature]</i> | 2/27 |
| 4) Originating | | |
| 5) Copy Distribution | | |
| a. Mayor's office (1 copies) | | |
| b. Clerk-Treasurer (Original & 2 copies) | | |
| | | |

RESOLUTION NO. 13-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized, to enter into an agreement with Brasfield & Gorrie, L.L.C. in a Not to Exceed (NTE) total contract amount of ONE HUNDRED TWELVE THOUSAND THREE HUNDRED TEN AND NO/100 DOLLARS (\$112,310.00) for Project Management Services for Redstone Gateway Package I and Package J, Project No. 65-13-SP20, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement between City of Huntsville and Brasfield & Gorrie, L.L.C. for Project Management Services for Redstone Gateway Package I and Package J, Project No. 65-13-SP20" consisting of a total of fifteen (15) pages plus five (5) additional pages consisting of Attachments 1-4, and the date of February 28, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 28th day of February, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 28th day of February, 2013.

Mayor of the City of Huntsville,
Alabama

AGREEMENT BETWEEN
CITY OF HUNTSVILLE, ALABAMA
AND
BRASFIELD AND GORRIE, L.L.C.
FOR
PROJECT MANAGEMENT SERVICES
FOR
REDSTONE GATEWAY PACKAGE I AND PACKAGE J

Project Number 65-13-SP20
February 28, 2013

President of the City Council of the City of
Huntsville, Alabama
Date: February 28, 2013

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**AGREEMENT BETWEEN CITY OF HUNTSVILLE, ALABAMA
AND BRASFIELD AND GORRIE, L.L.C.
FOR PROJECT MANAGEMENT SERVICES
FOR
REDSTONE GATEWAY PACKAGE I AND PACKAGE J
Project Number 65-13-SP20**

THIS AGREEMENT made as of the 28th day of February in the year 2013, by and between the CITY OF HUNTSVILLE, ALABAMA (hereinafter called OWNER), and BRASFIELD AND GORRIE, L.L.C., (hereinafter called PROJECT MANAGER).

WITNESSETH, for the considerations hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE PROJECT MANAGER

The OWNER hereby engages the PROJECT MANAGER, and the PROJECT MANAGER hereby accepts the engagement to provide general project management and consultation as a representative of the OWNER to include the following:

- 1.1 Professional services performed by the PROJECT MANAGER and his employees for the management of preconstruction and construction of Public Infrastructure Improvements as required for the continued development of Phase I of a project site on Redstone Arsenal consisting of approximately 470 acres. The scope of services is further described in ARTICLE 2.
- 1.2 By executing this Agreement, the PROJECT MANAGER represents to the OWNER that the PROJECT MANAGER is a professional firm qualified to act in the capacity of the OWNERS representative for the PROJECT; is experienced in the type, scope and complexity of the work to be performed on the PROJECT, and specifically with respect to the Public Infrastructure Improvements in order to accomplish its responsibilities with respect to its obligations under this Agreement and is experienced with the requirements of the Alabama Public Works Act, the Alabama Bid Law, and the Administrative Code regulating the practice of engineering and land surveying including the rules of professional conduct. The PROJECT MANAGER further represents that he will maintain all necessary licenses, certifications, permits or other authorizations necessary to act in that capacity until the PROJECT MANAGER's remaining duties hereunder have been satisfied.
- 1.3 The PROJECT MANAGER shall assign only qualified personnel to perform any service concerning the PROJECT. The PROJECT MANAGER assumes full responsibility for the negligent acts, errors and omissions of its consultants or others employed or retained by the PROJECT MANAGER in connection with the PROJECT.
- 1.4 The PROJECT MANAGER shall maintain adequate on-site office facilities suitable for accomplishing its work under this agreement. Office facilities shall be comparable to an Alabama Department of Transportation Type 3 Engineers Field Office as described in Section 603 of ALDOT "STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION." Security, furnishings, utilities, janitorial services, parking and other subsidiary items necessary for a fully functional office shall be included as incidental costs to the office facility.
- 1.5 Execution of this Agreement by the PROJECT MANAGER constitutes a representation that the PROJECT MANAGER has become familiar with the PROJECT site, the Environmental Assessment (EA) for the PROJECT, the local conditions under which the PROJECT is to be implemented, including procedures and requirements of the US Army and the City of Huntsville, and the requirements and obligations of the OWNER under the Annexation and Development Agreement (ADA) by and between the City of Huntsville and L W Redstone Company, LLC, (City of Huntsville Council Resolution 10-208) a copy of which has been provided to the PROJECT MANAGER. The PROJECT MANAGER accepts the relationship of trust and confidence with the

OWNER and L W Redstone created by the terms of this Agreement. In performing its duties and responsibilities under this Agreement, the PROJECT MANAGER agrees to furnish its best skill and judgment in furthering the interests of the OWNER and L W Redstone, consistent with the standard of care set forth herein. The PROJECT MANAGER shall perform all its duties and obligations under the Agreement using efficient business and contract administration, consistent with the standard of care utilized by construction managers for major infrastructure projects in the State of Alabama.

ARTICLE 2 – SERVICES OF THE PROJECT MANAGER

- 2.1** The PROJECT MANAGER's services shall be provided in conjunction and coordination with the services of the OWNER's design engineers and the OWNER's construction contractors and, at the request of the OWNER, shall include such services as planning, scheduling, bid package preparation, bidding, contract management, construction management, coordination and communication.
- 2.2** The PROJECT MANAGER shall provide qualified personnel in sufficient numbers to carry out the requirements of this agreement and shall manage the schedule to provide an expeditious and economical completion of the work.
- 2.3** The PROJECT MANAGER shall transmit questions on interpretations of design to the OWNER for resolution through the appropriate OWNER's engineering firm which prepared the design and sealed the plans. The PROJECT MANAGER shall not substitute his judgment for that of the engineer of record.
- 2.4** The PROJECT MANAGER shall serve as the OWNER's professional representative in those portions of the PROJECT to which this agreement applies and shall consult with and advise the OWNER during the performance of these services.
- 2.5** The PROJECT MANAGER shall promptly correct, or have corrected, any errors, omissions, deficiencies or conflicts in the PROJECT MANAGER's work product or that of his sub-consultants, without additional compensation for time, reproduction or distribution.
- 2.6** A valid City of Huntsville license shall be maintained throughout the term of this contract.
- 2.7** The PROJECT MANAGER shall promptly notify the OWNER in writing of any information it obtains pertaining to any claim; alleged claim, including but not limited to mechanics' liens, construction liens, and builder's trust fund claims; or similar claims, involving any PROJECT contractor, supplier, subcontractor, or consultant, whether or not such claims or alleged claims arise from or relate to the PROJECT.

ARTICLE 3 - PERIOD OF SERVICES

- 3.1** The PROJECT MANAGER shall commence services pursuant to this agreement as of March 1, 2013. The final completion date for the completion of project management services as outlined in Article 2 shall be November 1, 2013.

If the PROJECT MANAGER becomes aware of delays due to time allowances for review and approval being exceeded, delay by the OWNER, the OWNER's design professionals or consultants, or any other reason beyond the PROJECT MANAGER's control which may result in the delay of the expected completion dates for the CITY WORK, the PROJECT MANAGER shall promptly notify the OWNER. If the OWNER becomes aware of any delays or other causes that will affect the PROJECT MANAGER's work, the OWNER shall promptly notify the PROJECT MANAGER.

ARTICLE 4 - PAYMENT TO THE PROJECT MANAGER

4.1 BASIC SERVICES

| | |
|--|--------------|
| Project Management Not to Exceed Amount of- | \$ 96,560.00 |
|--|--------------|

| | |
|---|--------------|
| Reimbursables Not to Exceed Amount of- | \$ 15,750.00 |
|---|--------------|

| | |
|--|----------------------------|
| TOTAL CONTRACT AMOUNT: NOT TO EXCEED CEILING PRICE: | <u>\$112,310.00</u> |
|--|----------------------------|

4.2 ALLOWABLE REIMBURSABLE EXPENSES

Certain reasonable and necessary direct expenses of the PROJECT MANAGER will be considered allowable costs and will be reimbursed by the OWNER. Costs that are specifically reimbursable include necessary job site trailer expenses; computer services; word processing services; telephone; printing; binding and reproduction charges; postage and handling charges; and other similar costs.

Reimbursable expenses shall not exceed the dollar limitations set forth for each Phase in Art. 4.1, Basic Services.

4.3 NOT TO EXCEED (NTE) CEILING PRICE

The OWNER will not be obligated to pay the PROJECT MANAGER any amount in excess of the NTE ceiling price, and the PROJECT MANAGER shall not be obligated to continue performance if to do so would exceed the NTE ceiling price set forth, unless and until the OWNER notifies the PROJECT MANAGER in writing that the NTE ceiling price has been increased and specifies in the notice a revised NTE ceiling price that shall constitute the new NTE ceiling price for performance under this contract. NTE ceiling price increase will be done by a written change order to the contract issued by the OWNER that will not require the PROJECT MANAGER's approval. When and to the extent that the NTE ceiling price set forth has been increased, any hours extended and material costs incurred by the PROJECT MANAGER in excess of the NTE ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the NTE ceiling price.

4.4 EFFECTIVE DATE

This contract shall have no force or effect unless and until it is executed by the OWNER and the PROJECT MANAGER and a properly executed copy is mailed to the PROJECT MANAGER with a notice to proceed (NTP). If a NTP is not issued within sixty (60) days commencing from the last date of execution of this contract by the OWNER and the PROJECT MANAGER, then this contract shall be NULL AND VOID, the OWNER will not be obligated to any payment to the PROJECT MANAGER and the PROJECT MANAGER will not be obligated to perform any work under said CONTRACT.

ARTICLE 5 - GENERAL PAYMENT PROCEDURE

5.1 INVOICES

5.1.1 The PROJECT MANAGER shall submit monthly invoices to the OWNER for the basic services described under Article 2 . Invoices must include the City of Huntsville project

name and number, dates of services, contract amount, previous billings and current billing. If services are billed as time and material, the classification and hours of such persons rendering the services shall be attached to the invoice.

5.1.2 The signature of the PROJECT MANAGER on the invoice shall constitute the PROJECT MANAGER's representation to the OWNER that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein, that the reimbursable expenses included in the invoice have been reasonably incurred, that all obligations of the PROJECT MANAGER covered by prior invoices have been paid in full, and that, to the best of the PROJECT MANAGER's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the PROJECT MANAGER the payment of any portion thereof should be withheld. Submission of the PROJECT MANAGER's invoice for final payment and reimbursement shall further constitute the PROJECT MANAGER's representation to the OWNER that, upon receipt from the OWNER of the amount invoiced, all obligations of the PROJECT MANAGER to others, including its consultants, incurred in connection with the PROJECT, will be paid in full.

5.2 TIME FOR PAYMENT

The OWNER shall make payment for services within 60 days of receipt of valid invoice.

5.3 OWNER'S RIGHT TO WITHHOLD PAYMENT

In the event the OWNER becomes credibly informed that any representations of the PROJECT MANAGER, provided pursuant to Article 5.1.2, are wholly or partially inaccurate, the OWNER may withhold payment of sums then or in the future otherwise due to the PROJECT MANAGER until the inaccuracy, and the cause thereof, is corrected to the OWNER's reasonable satisfaction. Additionally, failure by the PROJECT MANAGER to supply substantiating records shall be reason to exclude related costs from the amounts which might otherwise be payable by the OWNER to the PROJECT MANAGER.

5.4 REIMBURSABLE EXPENSES

In addition to the requirements set forth in 5.1 above, invoices for reimbursable expenses shall include such documentation as the OWNER may require. The PROJECT MANAGER shall set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and shall bill expenses at actual cost or prevailing rate and without the addition of administrative charge, any multiple or surcharge.

5.5 W-9 TAXPAYER FORM

A Federal Tax Form W-9 shall be submitted to the OWNER at the time a contract is awarded. No payments of invoices can be made until this W-9 Tax Form has been properly submitted. A copy of the W-9 Tax Form can be requested from the OWNER or at the following website: www.irs.ustreas.gov/pub/irs-pdf/fw9.pdf.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.1 GENERAL

OWNER and PROJECT MANAGER agree that the following sections and provisions shall apply to the work to be performed under this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement.

6.2 CLARIFICATION OF WORK

If reviewing agencies raise questions regarding the work of the PROJECT MANAGER, OWNER shall be invited to participate in meetings and other coordination activities with those agencies.

6.3 CHANGES

6.3.1 The OWNER may, at any time by written order, make changes within the general scope of the Agreement in the services to be provided. If such changes cause an increase or decrease in PROJECT MANAGER's cost of, or time required for performance of any services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Upon notification of change, PROJECT MANAGER must assert in writing within 30 days from the date of receipt any claim of PROJECT MANAGER for adjustment unless OWNER grants a further period of time.

6.3.2 If findings in any phase of this PROJECT significantly alter the scope of work for subsequent phases, or if regulations are changed resulting in a scope of work change for any phase, fees set forth in Article 7 may be renegotiated by the OWNER and PROJECT MANAGER.

6.4 PROJECT MANAGER'S RECORDS

Documentation accurately reflecting services performed and the time expended by the PROJECT MANAGER and his personnel and records of reimbursable expenses shall be prepared concurrently with the performance of the services and shall be maintained by the PROJECT MANAGER. Prior to final payment, copies of all such records in both electronic and hard copy format shall be provided to the OWNER. PROJECT documents including current work plans, specifications, shop drawings, samples, submittals, purchase orders, requests for information and responses thereto, trade contracts and consultant agreements with change orders and amendments, change directives, work instructions, financial records and any other related documents, and revisions thereto, which arise out of or relate to the PROJECT, this Agreement, or the construction work shall also be maintained by the PROJECT MANAGER. The PROJECT MANAGER shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. All accounting and control systems as they relate to accounting for allowable costs shall be satisfactory to the OWNER. At all reasonable times, the OWNER and their respective accountants and representatives, shall be afforded access to, and shall be permitted to copy and audit, the PROJECT MANAGER's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement. The PROJECT MANAGER shall preserve all of the same for a period of five (5) years following final payment and resolution of all open issues under this Agreement, or for such longer period as may be required by law or good practice. If the PROJECT MANAGER receives notification of a dispute or of pending or commencement of litigation during this five-year period, the PROJECT MANAGER shall continue to maintain all PROJECT records until final resolution of the dispute or litigation. The PROJECT MANAGER shall make such records and documentation available to the OWNER upon notice and shall allow the authorized representative(s) of the OWNER to inspect, examine, review and copy the PROJECT MANAGER's records at the OWNER's reasonable expense.

6.5 USE AND OWNERSHIP OF DOCUMENTS

All rights of ownership, copyrights, construction documents, including all drawings, specifications and other documents, electronic media, or things prepared by or on behalf of the PROJECT MANAGER for the PROJECT are hereby transferred to the OWNER and shall be the sole property of the OWNER and are free of any retention rights of the PROJECT MANAGER. The PROJECT MANAGER hereby grants to the OWNER an unconditional right to use or to refer to, for any purpose whatsoever, the construction documents and any other documents or electronic

media prepared by or on behalf of the PROJECT MANAGER for the PROJECT, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents. The PROJECT MANAGER shall be permitted to retain copies thereof for its records. The PROJECT MANAGER's documents and other work products are not intended or represented to be suitable for re-use by OWNER or others on extensions of the PROJECT or on any other PROJECT. Any re-use without specific written verification or adaptation by PROJECT MANAGER will be at OWNER's sole risk and without liability or legal exposure to PROJECT MANAGER, and OWNER shall indemnify and hold harmless PROJECT MANAGER from all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse by the OWNER; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the PROJECT MANAGER.

6.6 TERMINATION FOR CAUSE

This Agreement may be terminated in whole or in part by the OWNER upon seven (7) days written notice if the PROJECT MANAGER fails to substantially perform in accordance with its material terms through no fault of the OWNER. Notice shall be delivered to the address of record by registered mail.

6.7 TERMINATION BY THE OWNER WITHOUT CAUSE

The OWNER may terminate this Agreement in whole or in part without cause upon seven (7) days' written notice to the PROJECT MANAGER. In the event of such a termination without cause, the PROJECT MANAGER shall be compensated for all services performed prior to termination, together with reimbursable expenses incurred. In such event, the PROJECT MANAGER shall promptly submit to the OWNER its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 8.1. All records, data, parameters, and other information collected or obtained in the performance of this Agreement shall be delivered to OWNER.

6.9 HAZARDOUS MATERIALS

Should at any time PROJECT MANAGER learn of the discovery or uncovering of any hazardous or potentially hazardous materials on the PROJECT, PROJECT MANAGER shall immediately notify the OWNER, and take appropriate steps to protect all potentially affected personnel and property.

ARTICLE 7 - INDEMNITY AND INSURANCE

7.1 INSURANCE

The PROJECT MANAGER shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The PROJECT MANAGER shall procure and maintain for the duration of the job until final acceptance by the OWNER, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the PROJECT MANAGER, his agents, representatives, employees or subcontractor.

7.2 MINIMUM SCOPE OF INSURANCE:

A. General Liability:

Insurance shall be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the OWNER's approval. The same insurance company should write General Liability Coverage and OWNERs PROJECT MANAGERS Protective Insurance.

B. Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury
Explosion, Collapse and Underground
Broad Form Property Damage

C. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage shall be maintained for a discovery and reporting period of not less than five (5) years after completion of the professional services and Certificates of Insurance shall be submitted to the OWNER on a yearly basis during the time frame. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject PROJECT. The professional liability insurance shall contain contractual liability coverage.

D. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

E. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. "Waivers of Subrogation" in favor of the OWNER shall be endorsed to Worker's Compensation Insurance.

F. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

7.3 MINIMUM LIMITS OF INSURANCE:

A. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit
\$ 2,000,000 Products - Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence

B. Professional Liability:

Insurance may be made on a "claims-made" basis:

\$ 500,000 per claim - Land Surveyors
\$ 5,000,000 per claim - Other Professionals

C. Automobile Liability:

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

D. Workers' Compensation:

As required by the State of Alabama Statute

E. Employers Liability:

\$ 1,000,000 Bodily Injury by Accident or Disease

\$ 1,000,000 Policy Limit by Disease

7.4 OTHER INSURANCE PROVISIONS:

The OWNER is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the OWNER's best interest. If such adjustments are made by the OWNER and the adjustment results in a premium increase to the PROJECT MANAGER; then, the PROJECT MANAGER shall be entitled to direct reimbursement by the OWNER for the additional premium coverage. If the insurance requirements are not adjusted by the OWNER prior to the OWNER's release of specifications with regard to the PROJECT in question, then the minimum limits shall apply. The City of Huntsville/OWNER shall be named on the policies of general liability and automobile insurance and on the certificate of insurance as an Additional Insured. Additional Insured status on the Commercial General Liability policy shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent and coverage shall be afforded on a primary basis.

The policies are to contain, or be endorsed to contain, the following provisions:

A. All Coverage:

The PROJECT MANAGER is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewal or materially changed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the OWNER. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the OWNER.

7.5 ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers authorized by the State of Alabama with an A.M. Best rating of A-V or better.

7.6 VERIFICATION OF COVERAGE:

The OWNER shall be indicated as a Certificate Holder and the PROJECT MANAGER shall furnish the OWNER with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the OWNER before work commences. The OWNER reserves the right to require complete, certified copies of all required insurance policies at any time.

7.7 CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE PROJECT MANAGER:

The PROJECT MANAGER shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant showing insurance of the same type or types and to the extent of the coverage set forth in this Article 7.

7.8 HOLD HARMLESS AGREEMENT:

A. Other Than Professional Liability Exposures:

The PROJECT MANAGER, to the fullest extent permitted by law, shall indemnify and hold harmless the OWNER, its elected and appointed officials, employees, agents, and representatives against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of the PROJECT MANAGER or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this paragraph.

B. Professional Liability:

The PROJECT MANAGER agrees, to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees, and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) actually or allegedly arising out of, or resulting from, the professional services of the PROJECT MANAGER or the PROJECT MANAGER's consultants, subcontractors, or suppliers, including, without limitation, any breach of contract or any negligent acts, errors, or omissions in the performance of the professional services provided pursuant to or as a result of this Agreement. Neither, the OWNER nor the PROJECT MANAGER shall be obligated to indemnify the other party in any manner whatsoever for the other parties own negligence.

To the fullest extent permitted by law, the PROJECT MANAGER shall defend, protect, indemnify, and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the PROJECT MANAGER has reason to believe the use of a required design, process or product is an infringement of a patent, the PROJECT MANAGER shall be responsible for such loss unless such information is promptly given to the OWNER.

ARTICLE 8- MISCELLANEOUS PROVISIONS

8.1 GOVERNING LAW

This Agreement shall be governed by the law of the State of Alabama.

8.2 INTENT AND INTERPRETATION

8.2.1 The intent of this contract is to require complete, correct and timely execution of the work. Any work that may be required, implied, or inferred by the contract documents, or any one or more of them, as necessary to produce the intended result shall be provided by the PROJECT MANAGER.

8.2.2 This contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one contract document shall be considered as required by the contract.

8.2.3 When a word, term or phrase is used in this contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction and engineering industry; and third, if there is no generally accepted meaning, according to its common and customary usage.

8.2.4 The words "include", "includes", or "including", as used in this contract, shall be deemed to be followed by the phrase, "without limitation".

8.2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this contract.

8.2.6 Words or terms used as nouns in this contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

8.3 TIME IS OF THE ESSENCE

Time limitations contained herein, or provided for hereby, are of the essence of this Agreement. The PROJECT MANAGER understands and acknowledges that time is of the essence in completion of the PROJECT and that the OWNER will incur damages if the PROJECT is not completed on time.

8.4 SUCCESSORS AND ASSIGNS

The PROJECT MANAGER shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the OWNER. Subject to the provisions of the immediately preceding sentence, the OWNER and the PROJECT MANAGER, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be party hereof, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and PROJECT MANAGER.

8.5 THIRD-PARTY BENEFICIARIES

L.W. Redstone, LLC and the United States of America through the Secretary of Department of the Army (Army) are considered to be third party beneficiaries to this Agreement. Otherwise, this Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any

rights in favor of, or any cause of action in favor of, any third party, other than L. W. Redstone, LLC and the Army against the OWNER or the PROJECT MANAGER. Furthermore, all contracts prepared by the PROJECT MANAGER for any CITY WORK shall contain a provision making LW Redstone, LLC a third party beneficiary of such contract with the authority to enforce the contractor's obligations thereunder.

8.6 INTELLECTUAL PROPERTY/ CONFIDENTIALITY

All information, documents, and electronic media furnished by the OWNER to the PROJECT MANAGER belong to the OWNER, are considered proprietary and confidential, unless otherwise indicated by the OWNER, and are furnished solely for use on the OWNER's PROJECT. Such information, documents, and electronic media shall be kept confidential by the PROJECT MANAGER, shall only be released as necessary to meet official regulatory requirements in connection with the PROJECT, and shall not be used by the PROJECT MANAGER on any other PROJECT or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the OWNER hereunder is specifically authorized in writing by the OWNER in advance. This Section 8.6 shall survive the expiration of this Agreement.

8.7 SUBCONTRACT REQUIREMENTS

The PROJECT MANAGER shall include the terms and conditions of this Agreement in every subcontract or agreement with a consultant for this PROJECT so that these terms and conditions shall be binding upon each subcontractor or consultant. The subcontractor(s)/consultant(s) will maintain all licenses and certifications required by all public entities having jurisdiction over the PROJECT or PROJECT work and will maintain all necessary licenses, certifications, permits or other authorizations necessary for the PROJECT until the remaining duties hereunder have been satisfied.

8.8 NOTICES

Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; if delivered by facsimile to 256-427-5325; or is sent by U.S. Mail, postage prepaid to:

Kathy Martin
City of Huntsville Engineering
P. O. Box 308 (35804)
320 Fountain Circle (35801)
Huntsville, AL

All notices shall be given to the addresses set forth above. Notices, hand delivered or delivered by facsimile, shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

8.9 STRICT COMPLIANCE

No failure of the OWNER to insist upon strict compliance by the PROJECT MANAGER with any provision of this Contract shall operate to release, waive, discharge, modify, change or affect any of the PROJECT MANAGER's obligations.

3.10 WAIVER

No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

8.11 SEVERABILITY

If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

8.12 ETHICS

The PROJECT MANAGER shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the PROJECT. The PROJECT MANAGER shall not confer on any governmental, public or quasi-public official having any authority or influence over the PROJECT any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised. The PROJECT MANAGER shall not, without the express written permission of the OWNER, engage or recommend to the OWNER engagement of any consultant, trade contractor, subcontractor, or supplier to provide services on behalf of the PROJECT MANAGER, OWNER or PROJECT in which the PROJECT MANAGER has a direct or indirect proprietary or other pecuniary interest; or call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the PROJECT MANAGER or in which any consultant, trade contractor, subcontractor, or supplier of the PROJECT MANAGER has a direct or indirect proprietary or other pecuniary interest. Without prior notification and written approval of the OWNER, the PROJECT MANAGER and the PROJECT MANAGER'S subconsultants shall not offer services to the OWNER'S contractors on the PROJECT nor offer to construct any CITY WORK.

8.13 MEDIATION

In an effort to resolve any conflicts or claims that arise during or subsequent to the performance of this Agreement, the OWNER and the PROJECT MANAGER agree that all disputes between them arising out of or relating to this Agreement or the PROJECT may be submitted to non-binding mediation prior to the filing of any lawsuits, unless the parties mutually agree otherwise.

8.14 E-VERIFY

The PROJECT MANAGER shall enroll, and shall remain enrolled for the duration of this contract, in a designated employment eligibility verification system (E-Verify) in accordance with the City of Huntsville Ordinance 09-735. If the PROJECT MANAGER uses subcontractors in connection with the performance of work herein and the value of the subcontract exceeds \$3,000, the subcontractor shall also comply with this ordinance. The PROJECT MANAGER shall include specific written notice in all requests for bids or proposals prepared by the PROJECT MANAGER, that contractors and any subcontractors are required to enroll in the E-verify program as required by the ordinance. Failure to comply with the requirements of the ordinance shall be a material

breach of the contract.

As a condition of this agreement, pursuant to 8 U.S.C. §1324a, Brasfield and Gorrie, LLC hereby certifies that it has not knowingly employed, recruited, referred for a fee, or contracted with an unauthorized alien, with respect to employment in the United States. Further, Brasfield and Gorrie, LLC hereby certifies that it has enrolled in the City of Huntsville designated employment eligibility verification system in accordance with Ordinance 09-735 and will maintain enrollment throughout the term of this contract.

BRASFIELD AND GORRIE, LLC
(Company)

BY: [Signature]
(Authorized Representative)

8.15 ENTIRE AGREEMENT

This Agreement represents the entire agreement between the OWNER and the PROJECT MANAGER and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both OWNER and PROJECT MANAGER.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**OWNER:
CITY OF HUNTSVILLE**

**PROJECT MANAGER:
BRASFIELD AND GORRIE, L.L.C.**

BY: _____
Tommy Battle

BY: [Signature]
William L. Steed, Jr.

TITLE: Mayor

TITLE: Vice President/Division Manager

ATTEST: _____

ATTEST: [Signature]

Given under my hand this _____ day

Given under my hand this 26th day

Of _____, 2013.

Of February, 2013.

Notary Public

[Signature]
Notary Public

My commission expires _____

My commission expires 11/24/13

ATTACHMENT 1
SCOPE OF SERVICES

(Refer to letter dated February 8, 2013, from Robert M. Kelley to Kathy Martin and attachments).



February 8, 2013

Rum
Ms. Kathy Martin
City of Huntsville
320 Fountain Circle
Huntsville, AL 35801

Re: Redstone Gateway Phase I
Project Management Services

Dear Kathy:

Please find attached our proposal budget for Project Manager Services to be performed on a Time & Material Basis for Package I and Package J Construction Administration in the amount of \$112,310.

Please note our current Lump Sum Contract for Project Manager Services expires on 2/28/13 and the attached T&M rates and budget would be utilized after 2/28/13.

Please send us copy of the desired contract or terms and conditions for our review so the new contract or change order can be submitted to City Council for approval on 2/28/13.

We appreciate the opportunity to continue to serve as your Project Manager on the Redstone Gateway Project and look forward to working with the City of Huntsville.

Please call me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Robert M. Kelley".

Robert M. Kelley
Senior Project Manager

Enclosures

cc: Greg Hall/COPT

CITY OF HUNTSVILLE, ALABAMA REPORT OF OWNERSHIP FORM

A. General Information. Please provide the following information:

- Legal name(s) (include "doing business as", if applicable): Brasfield & Corrie LLC
- City of Huntsville current taxpayer identification number (if available): 29230
(Please note that if this number has been assigned by the City and if you are renewing your business license, the number should be listed on the renewal form.)

B. Type of Ownership. Please complete the un-shaded portions of the following chart by checking the appropriate box below and entering the appropriate Entity I.D. Number, if applicable (for an explanation of what an entity number is, please see paragraph C below):

| | |
|--|--|
| <input type="checkbox"/> Individual or Sole Proprietorship | Not Applicable |
| <input type="checkbox"/> General Partnership | Not Applicable |
| <input type="checkbox"/> Limited Partnership (LP) | Number & State: |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | Number & State: |
| <input type="checkbox"/> Limited Liability Company (LLC) (Single Member) | Number & State: |
| <input checked="" type="checkbox"/> LLC (Multi-Member) | Number & State: <u>600-716 - Delaware</u> |
| <input type="checkbox"/> Corporation | Number & State: |
| <input type="checkbox"/> Other, please explain: | Number & State (if a filing entity under state law): |

C. Entity I.D. Numbers. If an Entity I.D. Number is required and if the business entity is registered in this state, the number is available through the website of Alabama's Secretary of State at: www.sos.state.al.us/, under "Government Records". If a foreign entity is not registered in this state please provide the Entity I.D. number (or other similar number by whatever named called) assigned by the state of formation along with the name of the state.

D. Formation Documents. Please note that, with regard to entities, the entity's formation documents, including articles or certificates of incorporation, organization, or other applicable formation documents, as recorded in the probate records of the applicable county and state of formation, are not required unless: (1) specifically requested by the City, or (2) an Entity I.D. Number is required and one has not been assigned or provided.

Please date and sign this form in the space provided below and either write legibly or type your name under your signature. If you are signing on behalf of an entity please insert your title as well.

Signature: Sabrina Dean Title (if applicable): Corp. Project Accountant
 Type or legibly write name: Sabrina Dean Date: 1-11-12

**Redstone Gateway
Brasfield & Gorrie
Project Manager Personnel Fee Schedule**

| <u>Project Manager's Fee Schedule</u> | <u>Hourly Rate</u> |
|--|---------------------------|
| Division Manager | \$195.00 |
| Operations Manager | \$150.00 |
| Sr. Project Manager | \$145.00 |
| Sr. Civil Development Manager | \$142.50 |
| Project Manager | \$120.00 |
| Assistant Project Manager | \$95.00 |
| Intern | \$70.00 |
| Sr. Preconstruction Manager | \$165.00 |
| Senior Estimator | \$142.50 |
| Estimator | \$105.00 |
| Administrative Assistant | \$75.00 |
| Project Coordinator/Document Control | \$35.00 |
| General Superintendent | \$195.00 |
| Sr. Superintendent | \$144.00 |
| Professional Engineer | \$180.00 |

ATTACHMENT 4 - CONTRACT DOCUMENT REQUIREMENTS LIST
(For reference only)

| REQUIREMENT | SUBMIT TO | SUBMITTAL REQUIREMENT DATE | NUMBER OF COPIES | REFERENCE SECTION OF CONTRACT AND COMMENTS |
|--|--------------------------|--|-------------------------|---|
| Deviations from OWNER's standards. | OWNER | Prior to incorporating deviations. | 2 | Article 2.5 |
| PROJECT MANAGER's monthly invoices. | OWNER | Monthly | 4 | Article 5.1.1 |
| Consultant progress report. | OWNER | Monthly | 4 | Article 5.1.1 |
| Records, data, parameters, design calculations and other information. | OWNER | Cancellation of contract. | 2 | Article 6.7 |
| Documentation, records of reimbursable expenses, record copies of all written communications, and any memoranda of verbal communications related to the PROJECT. | OWNER | Upon notice from the OWNER. | 2 | Article 6.4 |
| Termination notification. | OWNER or PROJECT MANAGER | 7 days prior to termination. | 2 | Article 6.10 & 6.11 |
| Certificate of Insurance for PROJECT MANAGER. | OWNER | At 0% design conference | 1 | Article 7.2(B) and 7.6. |
| Insurance cancellation, suspension, or reduction in coverage or limits. | OWNER | 30 days prior to effective date except for cancellation which is 10 days notification. | 1 | Article 7.4(A) |
| Certificate of insurance for sub consultants/subcontractors. | OWNER | At 0% design conference. | 1 | Article 7.7 |