

# CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 04/24/2024

Contract/Lease Control #: C24-3982-TDD

Procurement#: SINGLE SOURCE

Contract/Lease Type: CONTRACT-AGREEMENT

Award To/Lessee: FOLEY PRODUCTS COMPANY, LLC

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 04/24/2024

Expiration Date: 04/23/2025 W/ 4 1 YR RENEWALS

Description of: CONCRETE CULVERT TRANSPORTATION

Department: TDD

Department Monitor: ADAMS

Monitor's Telephone #: 850-651-7131

Monitor's FAX # or E-mail: JADAMS@MYOKALOOSA.COM

Closed: \_\_\_\_\_

CC: BCC RECORDS

**PROCUREMENT/CONTRACT/LEASE  
INTERNAL COORDINATION SHEET**

Procurement/Contract/Lease Number: T310 Tracking Number: 513324  
Procurement/Contractor/Lessee Name: Foley Products Company Grant Funded: YES \_\_\_ NO X  
Purpose: Concrete Culvert Transportation  
Date/Term: 1yr w/ 4/yr renewals 1.  GREATER THAN \$100,000  
Department #: 1175 2.  GREATER THAN \$50,000  
Account #: 563753 3.  \$50,000 OR LESS  
Amount: \$25,000  
Department: TDD Dept. Monitor Name: Adams

*Purchasing Review*

Procurement or Contract/Lease requirements are met: DeRita Mason Date: 3-27-24  
Purchasing Manager or designee: \_\_\_\_\_ DeRita Mason, Erin Poole, Amber Hammonds

*2CFR Compliance Review (if required)*

Approved as written: no federal funds Grant Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Grants Coordinator: \_\_\_\_\_ Suzanne Ulloa

*Risk Management Review*

Approved as written: see email attached Date: 3-27-24  
Risk Manager or designee: \_\_\_\_\_ Lydia Garcia

*County Attorney Review*

Approved as written: see email attached Date: 3-28-24  
County Attorney: \_\_\_\_\_ Lynn Hoshihara, Kerry Parsons or Designee

*Department Funding Review*

Approved as written: \_\_\_\_\_ Date: \_\_\_\_\_

*IT Review (if applicable)*

Approved as written: \_\_\_\_\_ Date: \_\_\_\_\_

## DeRita Mason

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**From:** Odessa Cooper-Pool  
**Sent:** Wednesday, March 27, 2024 3:18 PM  
**To:** DeRita Mason  
**Cc:** Lynn Hoshihara; Kerry Parsons  
**Subject:** FW: Foley Products contract for Concrete Transport  
**Attachments:** Quote- Morgan Marine.pdf; Basic Agreement Single Source.docx; Single Source - FoleyJA.pdf; General Services Insurance Requirements-2024.docx

Good afternoon DeRita,

The contract for Concrete Transport by Foley Products has been reviewed and is approved by Risk Management. Please add the General Services Insurance to section B.

Thank you,

### Odessa Cooper-Pool

Public Records & Contracts Specialist  
Human Resources/ Risk Management  
Okaloosa County BCC  
302 N. Wilson Street, Crestview, FL 32536  
Office: 1-850-689-4111



"And, when you want something, all the universe conspires in helping you to achieve it."— **Paulo Coelho**, *The Alchemist*

**Please note: Due to Florida's very broad public records laws, most written communications to or from County employees regarding County business are public records, available to the public and media upon request. Therefore, this written e-mail communication, including your e-mail address, may be subject to public disclosure.**

**From:** DeRita Mason <dmason@myokaloosa.com>  
**Sent:** Wednesday, March 27, 2024 10:47 AM  
**To:** Lynn Hoshihara <lhoshihara@myokaloosa.com>  
**Cc:** Kerry Parsons <kparsons@ngn-tally.com>; Odessa Cooper-Pool <ocooperpool@myokaloosa.com>; Jacqueline Matichuk <jmatichuk@myokaloosa.com>  
**Subject:** FW: Foley Products contract for Concrete Transport

Good morning,  
Please review and approve the attached.  
Thank you,

DeRita Mason

## DeRita Mason

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**From:** Lynn Hoshihara  
**Sent:** Tuesday, April 2, 2024 10:18 AM  
**To:** Charlotte Dunworth; DeRita Mason  
**Cc:** Kerry Parsons; Odessa Cooper-Pool; Jacqueline Matichuk  
**Subject:** Re: Foley Products contract for Concrete Transport  
**Attachments:** Basic Agreement Single Source.docx; Single Source - FoleyJA.pdf

Thanks Charlotte. I appreciate the explanation.

DeRita - the attached agreement is approved, but please attach the Foley quote and remove the Morgan Marine quote.

Lynn

Lynn M. Hoshihara  
County Attorney  
Okaloosa County, Florida

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**From:** Charlotte Dunworth  
**Sent:** Tuesday, April 2, 2024 10:46 AM  
**To:** Lynn Hoshihara; DeRita Mason  
**Cc:** Kerry Parsons; Odessa Cooper-Pool; Jacqueline Matichuk  
**Subject:** RE: Foley Products contract for Concrete Transport

Hi Lynn-  
Foley = \$500 for 22-tons or \$22.73/ton  
Morgan Marine = \$850 for 25-tons or \$34/ton

I think your suggestion to remove the load tonnage is fine because we're going with the lowest price vendor based on both per load or per ton calculation.

**DESTIN  
FORT  
WALTON  
BEACH  
FLORIDA**

**CHARLOTTE DUNWORTH**  
Deputy Director of Finance + Compliance  
Destin-Fort Walton Beach, Florida  
850.609.5385 | 850.830.2735  
1250 Miracle Strip Pkwy SE, Fort Walton Beach, FL 32548  
destinfwb.com

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## Detail by Entity Name

Foreign Limited Liability Company  
FOLEY PRODUCTS COMPANY, LLC

### Filing Information

**Document Number** M21000017599  
**FEI/EIN Number** 20-2316013  
**Date Filed** 12/27/2021  
**State** DE  
**Status** ACTIVE

### Principal Address

354 Newnan Crossing Bypass  
Suite 208  
Newnan, GA 30265

Changed: 02/22/2024

### Mailing Address

354 Newnan Crossing Bypass  
Suite 208  
Newnan, GA 30265

Changed: 02/22/2024

### Registered Agent Name & Address

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE, FL 32301-2525

### Authorized Person(s) Detail

#### **Name & Address**

Title Member

FPC Holdco, LLC  
354 Newnan Crossing Bypass  
Suite 208  
Newnan, GA 30265

Title Manager

Liang, Stella  
354 Newnan Crossing Bypass  
Suite 208  
Newnan, GA 30265

**Annual Reports**

<b>Report Year</b>	<b>Filed Date</b>
2022	04/28/2022
2023	04/25/2023
2024	02/22/2024

**Document Images**

<a href="#"><u>02/22/2024 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/25/2023 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/28/2022 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>12/27/2021 -- Foreign Limited</u></a>	<a href="#">View image in PDF format</a>



CONTRACT #: C24-3982-TDD  
FOLEY PRODUCTS COMPANY, LLC  
CONCRETE CULVERT TRANSPORTATION  
EXPIRATION: 04/23/2025 W/4 1 YR RENEWALS

**AGREEMENT BETWEEN OKALOOSA COUNTY, FLORIDA  
AND** Foley Products Company, LLC

**CONTRACT ID** C24-3982-TDD  
(Single Source)

**THIS AGREEMENT** (hereinafter referred to as the "Agreement") is made this 24<sup>th</sup>, day of April, 2024, by and between Okaloosa County, a political subdivision of the state of Florida, (hereinafter referred to as the "County"), with a mailing address of 1250 N. Eglin Parkway, Suite 100, Shalimar, Florida, 32579, and Foley Products Company, LLC, a Foreign Limited Liability Company authorized to do business in the State of Florida (hereinafter referred to as "Contractor") whose Federal I.D. # is 20-2316013.

**RECITALS**

**WHEREAS**, the County is in need of a contractor to provide concrete culvert transportation ("Services"); and

**WHEREAS**, the Services can only be provided may be purchased from multiple sources, but, in order to meet certain functional and performance requirements there is only one economically feasible source for the purchase of the Services, the Contractor; and

**WHEREAS**, pursuant to Section 19 of the Okaloosa County Purchasing Manual, the County is procuring the services through a single source procurement. A copy of the Contractor's proposal and the County's single source justification is included as Attachment "A"; and

**WHEREAS**, Contractor is a certified and insured entity with the necessary experience to provide the desired Services; and

**WHEREAS**, the County wishes to enter into this Agreement with Contractor to provide the Services to the County for an amount of not to exceed twenty-five thousand Dollars (\$25,000), as further detailed below.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants herein, the parties agree as follows:

**1. Recitals and Attachments.** The Recitals set forth above are hereby incorporated into this Agreement and made part hereof for reference. The following documents are attached to this Agreement and are incorporated herein.

- Attachment "A" – Contractor's Proposal and the County's Single Source Justification;
- Attachment "B" – Insurance Requirements;
- Attachment "C" – Title VI list of pertinent nondiscrimination acts and authorities;
- Attachment "D" – Scrutinized Companies Certification;



**2. Services.** Contractor agrees to perform the following services, concrete culvert transportation. The Services to be provided are further detailed in the Contractor's proposal attached as Attachment "A" and incorporated herein by reference. The Services shall be performed by Contractor to the full satisfaction of the County. Contractor agrees to have a qualified representative to audit and inspect the Services provided on a regular basis to ensure all Services are being performed in accordance with the County's needs and pursuant to the terms of this Agreement and shall report to the County accordingly. Contractor agrees to immediately inform the County via telephone and in writing of any problems that could cause damage to the County. Contractor will require its employees to perform their work in a manner befitting the type and scope of work to be performed. Foley Products Company will be donating the concrete culvert products to the County. Ownership transfers at the time of delivery.

**3. Term and Renewal.** The term of this Agreement shall begin upon execution by the County, and shall continue for a period of one (1) year from the date of full execution of this Agreement, subject to the County's ability to terminate in accordance with Section 7 of this Agreement. The terms of Section 20 entitled "Indemnification and Waiver of Liability" shall survive termination of this Agreement.

This agreement may not be renewed; or  
(1) year renewals.

This agreement may be renewed upon mutual written agreement of the parties for a period of up to four (4), one

**4. Compensation.** The Contractor agrees to provide the Services to the County, including materials and labor, in a total amount of not to exceed twenty-five thousand Dollars (\$25,000), invoiced as \$500 per load.

a. Contractor shall submit an invoice to the County upon each load delivery. The invoice shall indicate that all services have been completed for that invoice period. In addition, Contractor agrees to provide the County with any additional documentation requested to process the invoices.

b. Disbursement. Check one:

There are no reimbursable expenses associated with this Agreement.

The following are reimbursable expenses associated with this Agreement:





- c. **Payment Schedule.** Invoices received from the Contractor pursuant to this Agreement will be reviewed by the initiating County Department. Payment will be disbursed as set forth above. If services have been rendered in conformity with the Agreement, the invoice will be sent to the Finance Department for payment. Invoices must reference the contract number assigned by the County after execution of this Agreement. Invoices will be paid in accordance with the State of Florida Local Government Prompt Payment Act.
- d. **Availability of Funds.** The County's performance and obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the County Commission.

Contractor shall make no other charges to the County for supplies, labor, taxes, licenses, permits, overhead or any other expenses or costs unless any such expenses or cost is incurred by Contractor with the prior written approval of the County. If the County disputes any charges on the invoices, it may make payment of the uncontested amounts and withhold payment on the contested amounts until they are resolved by agreement with the Contractor. Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**5. Ownership of Documents and Equipment.** All documents prepared by the Contractor pursuant to this Agreement and related Services to this Agreement are intended and represented for the ownership of the County only. Any other use by Contractor or other parties shall be approved in writing by the County. If requested, Contractor shall deliver the documents to the County within fifteen (15) calendar days.

**6. Insurance.** Contractor shall, at its sole cost and expense, during the period of any work being performed under this Agreement, procure and maintain the minimum insurance coverage required as set forth in Attachment "B" attached hereto and incorporated herein, to protect the County and Contractor against all loss, claims, damages and liabilities caused by Contractor, its agents, or employees.

**7. Termination and Remedies for Breach.**

- a. If, through any cause within its reasonable control, the Contractor shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the County shall have the right to terminate the Services then remaining to be performed. Prior to the exercise of its option to terminate for cause, the County shall notify the Contractor of its violation of the particular terms of the Agreement and grant Contractor \_\_\_\_\_ ( 10 ) days to cure such default. If the default remains uncured after \_\_\_\_\_ ( 10 ) days the County may terminate this Agreement, and the County shall receive a refund from the Contractor in an amount equal to the actual cost of a third party to cure such failure. If Contractor fails, refuses or is unable to perform any term of this Agreement, County shall pay for services rendered as of the date of termination.
  - i. In the event of termination, all finished and unfinished documents, data and other work product prepared by Contractor (and sub-Contractor (s)) shall be delivered to the County and the County shall compensate the Contractor for all Services satisfactorily performed prior to the date of termination, as provided in Section 4 herein.



- ii. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the County for damages sustained by it by virtue of a breach of the Agreement by Contractor and the County may reasonably withhold payment to Contractor for the purposes of set-off until such time as the exact amount of damages due the County from the Contractor is determined.
- b. Termination for Convenience of County. The County may, for its convenience and without cause immediately terminate the Services then remaining to be performed at any time by giving written notice. The terms of Section 7 Paragraphs a(i) and a(ii) above shall be applicable hereunder.
- c. Termination for Insolvency. The County also reserves the right to terminate the remaining Services to be performed in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.
- d. Termination for failure to adhere to the Public Records Law. Failure of the Contractor to adhere to the requirements of Chapter 119 of the Florida Statutes and Section 9 below, may result in immediate termination of this Agreement.

**8. Governing Law, Venue and Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the First Judicial Circuit in and for Okaloosa County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the County to file a lawsuit to enforce any term or provision under this Agreement, then the County shall be entitled to its costs and attorney's fees at the pretrial, trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the County pursuant to Section 768.28, Florida Statutes.

**9. Public Records.** Any record created by either party in accordance with this Contract shall be retained and maintained in accordance with the public records law, Florida Statutes, Chapter 119. Contractor must comply with the public records laws, Florida Statute chapter 119, specifically Contractor must:

- a. Keep and maintain public records required by the County to perform the service.
- b. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 Florida Statutes or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.



- d. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the public agency, upon the request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OKALOOSA COUNTY RISK MANAGEMENT DEPARTMENT 302 N. WILSON ST., CRESTVIEW, FL 32536 PHONE: (850) 689-5977 [riskinfo@myokaloosa.com](mailto:riskinfo@myokaloosa.com).**

**10. Audit.** The County and/or its designee shall have the right from time to time at its sole expense to audit the compliance by the Contractor with the terms, conditions, obligations, limitations, restrictions, and requirements of this Contract and such right shall extend for a period of three (3) years after termination of this Contract.

**11. Notices.** All notices and other communications required or permitted to be given under this Agreement by either party to the other shall be in writing and shall be sent (except as otherwise provided herein) (i) by certified mail, first class postage prepaid, return receipt requested, (ii) by guaranteed overnight delivery by a nationally recognized courier service, or (iii) by facsimile with confirmation receipt (with a copy simultaneously sent by certified mail, first class postage prepaid, return receipt requested or by overnight delivery by traditionally recognized courier service), addressed to such party as follows:

<b>If to the County:</b>	<b>With a copy to:</b> County Attorney Office 1250 N. Eglin Pkwy, Suite 100 Shalimar, FL 32579 (850) 224-4070
<b>If to the Contractor:</b>	Todd Swenson-SVP Foley Products Company, LLC 354 Newnan Crossing Bypass, Suite 208 Newnan, GA 30268



**12. Assignment.** Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of the County. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward the County.

**13. Subcontracting.** Contractor shall not subcontract any services or work to be provided to County without the prior written approval of the County's Representative. The County reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The County's acceptance of a subcontractor shall not be unreasonably withheld. The Contractor is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. Additionally, any subcontract entered into between the Contractor and subcontractor will need to be approved by the County prior to it being entered into and said agreement shall incorporate in all required terms in accordance with local, state and Federal regulations.

**14. Civil Rights.** The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**15. Compliance with Nondiscrimination Requirements.** During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest, agrees as follows:

- a. Compliance with Regulations: The Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated and attached hereto as Attachment "C".
- b. Nondiscrimination: The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- d. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or other



governmental entity to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the County or the other governmental entity, as appropriate, and will set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the County will impose such contract sanctions as it or another applicable state or federal governmental entity may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or

b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

f. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the County may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the County to enter into any litigation to protect the interests of the County. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**16. Compliance with Laws.** Contractor shall secure any and all permits, licenses and approvals that may be required in order to perform the Services, shall exercise full and complete authority over Contractor's personnel, shall comply with all workers' compensation, employer's liability and all other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer performing services such as the Services, and shall make all reports and remit all withholdings or other deductions from the compensation paid to Contractor's personnel as may be required by any federal, state, county, or municipal law, ordinance, rule, or regulation.

**17. Conflict of Interest.** The Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly which could conflict in any manner or degree with the performance of the Services. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Contractor. The Contractor guarantees that he/she has not offered or given to any member of, delegate to the Congress of the United States, any or part of this contract or to any benefit arising therefrom.

**18. Independent Contractor.** Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by Contractor and Contractor's employees. Under no circumstances shall Contractor or any of Contractor's employees look to the County as his/her employer, or as partner, agent or principal. Neither Contractor, nor any of Contractor's employees, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability



insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

**19. Third Party Beneficiaries.** It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**20. Indemnification and Waiver of Liability.** The Contractor agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the County, its agents, representatives, officers, directors, officials and employees from and against claims, damages, losses and expenses (including but not limited to attorney's fees, court costs and costs of appellate proceedings) relating to, arising out of or resulting from the Contractor's negligent acts, errors, mistakes or omissions relating to professional Services performed under this Agreement. The Contractor's duty to defend, hold harmless and indemnify the County its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury; sickness; disease; death; or injury to impairment, or destruction of tangible property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes or omissions related to Services in the performance of this Agreement including any person for whose acts, errors, mistakes or omissions the Contractor may be legally liable. The parties agree that TEN DOLLARS (\$10.00) represents specific consideration to the Contractor for the indemnification set forth herein.

The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

**21. Taxes and Assessments.** Contractor agrees to pay all sales, use, or other taxes, assessments and other similar charges when due now or in the future, required by any local, state or federal law, including but not limited to such taxes and assessments as may from time to time be imposed by the County in accordance with this Agreement. Contractor further agrees that it shall protect, reimburse and indemnify County from and assume all liability for its tax and assessment obligations under the terms of the Agreement.

The County is exempt from payment of Florida state sales and use taxes. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is the Contractor authorized to use the County's tax exemption number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

**22. Prohibition Against Contracting with Scrutinized Companies.** Pursuant to Florida Statutes Section 215.4725, contracting with any entity that is listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Contractors must certify that the company is not participating in a boycott of Israel. Any contract for goods or services of One Million Dollars (\$1,000,000) or more shall be terminated at the County's option if it is discovered that the entity submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in



the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria after July 1, 2018.

Any contract entered into or renewed after July 1, 2018 shall be terminated at the County's option if the company is listed on the Scrutinized Companies that Boycott Israel List or engaged in the boycott of Israel. Contractors must submit the certification that is attached to this agreement as Attachment "D". Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination was in error. If the Contractor does not demonstrate that the County's determination of false certification was made in error, then the County shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute Section 215.4725.

**23. Inconsistencies and Entire Agreement.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any attachment attached hereto, any document or events referred to herein, or any document incorporated into this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given superior effect and priority over any conflicting or inconsistent term, statement, requirement or provision contained in any other document or attachment, including but not limited to Attachments listed in Section 1.

**24. Severability.** If any term or condition of this Contract shall be deemed, by a court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms and conditions of this Contract shall remain in full force and effect. This Contract shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof.

**25. Entire Agreement.** This Agreement contains the entire agreement of the parties, and may be amended, waived, changed, modified, extended or rescinded only by in writing signed by the party against whom any such amendment, waiver, change, modification, extension and/or rescission is sought.

**26. Representation of Authority to Contractor/Signatory.** The individual signing this Agreement on behalf of Contractor represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The signatory represents and warrants to the County that the execution and delivery of this Agreement and the performance of the Services and obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Contractor and enforceable in accordance with its terms.

(Remainder of Page Intentionally Left Blank)



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

WITNESS:

*Todd Swenson*

Signature

Todd Swenson

Print Name

BY: Foley Products Company, LLC

---

**OKALOOSA COUNTY, FLORIDA**

DeRita Mason

Digitally signed by DeRita  
Mason  
Date: 2024.04.24 12:30:45  
-05'00'

BY: \_\_\_\_\_

DeRita Mason, Purchasing Manager





**Attachment "A"**  
**Contractor's Proposal and the County's Single Source Justification**



# SINGLE SOURCE PURCHASE JUSTIFICATION REQUEST

A single source means that a commodity or service can be purchased from multiple sources, but, in order to meet certain functional or performance requirements (e.g. parts matching existing equipment or materials) there is only one economically feasible source for the purchase.

**Date:** 03/26/2024

**PR No:**

**Requestor:** Alex Fogg

**Phone No:** 850-609-5394

**Department/Division:** Tourist Development Department

**Item Description:** Concrete culvert transport from Cantonment to Freeport

**Vendor:** Foley Products

**Vendor's Address:** PO Box 2447  
Columbus, GA 31902

**Vendor's Telephone No:** 770-251-0296

**Point of Contact:**

**Single Source Justification:**  
(attach additional docs if any)

Foley Products has concrete culverts that they are going to donate to the County's artificial reef program, charging \$500 per 22ton load to truck it from their facility in Cantonment to the County's staging area in Freeport. Concrete culverts meet the artificial reef needs of the county in a economically feasible manner (significantly less than it would normally cost to truck).

**Check One:**

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. (attach emergency condition documentation)
- Federal Awarding Agency or Pass Through Agency authorizes noncompetitive negotiations (letter of authorization is attached).
- The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).
- Other, additional justification required (continue on blank page as needed)

Charlotte Dunworth  
Digitally signed by Charlotte Dunworth  
Date: 2024.03.26 16:56:32 -05'00'

**Jennifer Adams** Digitally signed by Jennifer Adams  
Date: 2024.03.27 08:53:01 -05'00'

**Requesting Department Director Signature (or authorized Designee)**

**Date**

**REVIEW BY OMB AND PURCHASING**

Approved:

**OMB and Purchasing Department Comments:**

Denied:

**Faye Douglas** Digitally signed by Faye Douglas  
Date: 2024.03.27 14:21:27 -05'00'

**OMB Director Signature**

**Date**

P.O. Box 2447  
 Columbus, GA 31902  
 Phone: (770) 251-0296  
 Fax: (770) 254-2223



**QUOTE**

Quote #: 24-14483  
 Order Date: 3/20/2024  
 BidDate:

<b>Customer Name:</b> Destin Fort Walton Beach, Florida	<b>Job Name:</b> Cantonment Reef Material 1540 Miracle Strip Pkwy SE Fort Walton Beach, FL 32548
<b>Contact:</b> Alex Fogg	<b>Contact Email Address:</b>
<b>Phone :</b>	<b>SalesRep:</b> Other - to be assigned
<b>Fax:</b>	<b>SalesRep Phone:</b>
<b>Terms:</b> NET 30 DAYS	<b>SalesRep Email:</b>
<b>PO:</b>	
<b>DOT:</b>	

Qty	Item	UOM	Description	Weight	Unit Price	TX	Extension
Structure: RCP and Precast				Station:			
50	MOVE.PRODUCT	Each	RCP (Reinforced Concrete Pipe) and Precast Concrete Components	0	\$0.00	<input checked="" type="checkbox"/>	\$0.00
							\$0.00
Structure: Freight				Station:			
50	FREIGHT	Each	Freight Charge	0	\$500.00	<input checked="" type="checkbox"/>	\$25,000.00
							\$25,000.00
<b>Total Weight</b>				0		<b>Total</b>	\$25,000.00

Applicable taxes will be applied at time of sale.

**Office**

**This quotation is only valid in its entirety. Partial acceptance of this quotation is subject to an increase in pricing.**  
 This Quote is hereby accepted by Customer and Customer hereby orders the Products as listed in this Quote subject to Foley Products Company's Terms and Conditions which are viewable and available at [FoleyProducts.com](http://FoleyProducts.com). and are hereby incorporated as an integral part hereof and the Terms and Conditions of this Quote. In case of a conflict between any Purchase Order from Customer and Foley Products Company's Standard Terms and Conditions, notwithstanding any statement in Customer's Purchase Order which may be contrary to Foley Products Company's Terms and Conditions, Foley Products Company's Term and Conditions shall prevail.

Customer: Name listed above  
 By: \_\_\_\_\_  
 Printed Name of Signatory: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Signatory warrants and represents he/she has the authority to execute the acceptance of the Quote on behalf of the Customer.  
 Changes in product could result in price change

Directions:



**Attachment "B"**  
**Insurance Requirements**

## **GENERAL SERVICES INSURANCE REQUIREMENTS**

### **CONTRACTORS INSURANCE**

1. The Contractor shall not commence any work in connection with this Agreement until he has obtained all required insurance and the certificate of insurance has been approved by the Okaloosa County Risk Manager or designee.
2. All insurance policies shall be with insurers authorized to do business in the State of Florida and having a minimum rating of A, Class X in the Best Key Rating Guide published by A.M. Best & Co. Inc.
3. All insurance shall include the interest of all entities named and their respective officials, employees & volunteers of each and all other interests as may be reasonably required by Okaloosa County. The coverage afforded the Additional Insured under this policy shall be primary insurance. If the Additional Insured have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.
4. With the exception of Workers' Compensation policies and Professional Liability, the County shall be shown as an Additional Insured with Endorsement for each policy on the Certificate of Insurance.
5. The County shall retain the right to reject all insurance policies that do not meet the requirement of this Agreement. Further, the County reserves the right to change these insurance requirements with 60-day notice to the Contractor.
6. The County reserves the right at any time to require the Contractor to provide copies (redacted if necessary) of any insurance policies to document the insurance coverage specified in this Agreement.
7. Any subsidiaries used shall also be required to obtain and maintain the same insurance requirements as are being required herein of the Contractor.
8. Any exclusions or provisions in the insurance maintained by the Contractor that excludes coverage for work contemplated in this agreement shall be deemed unacceptable and shall be considered breach of contract.

## **WORKERS' COMPENSATION INSURANCE**

1. The Contractor shall secure and maintain during the life of this Agreement Workers' Compensation insurance for all of his employees employed for the project or any site connected with the work, including supervision, administration or management, of this project and in case any work is sublet, with the approval of the County, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation insurance for all employees employed at the site of the project, and such evidence of insurance shall be furnished to the County not less than ten (10) days prior to the commencement of any and all sub-contractual Agreements which have been approved by the County.
2. Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.
3. No class of employee, including the Contractor himself, shall be excluded from the Workers' Compensation insurance coverage. The Workers' Compensation insurance shall also include Employer's Liability coverage and a Waiver of Subrogation in favor of the County on the Certificate of Insurance. If there is an existing approved State of Florida Exemption for Workers' Compensation it must be provided to Okaloosa County.

## **BUSINESS AUTOMOBILE LIABILITY**

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage. If the contractor does not own vehicles, the contractor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Policy. Contractor must maintain this insurance coverage throughout the life of this Agreement.

## **COMMERCIAL GENERAL LIABILITY INSURANCE**

1. The Contractor shall carry Commercial General Liability insurance against all claims for Bodily Injury, Property Damage and Personal and Advertising Injury liability caused by the Contractor.
2. Commercial General Liability coverage shall include the following:
  - 1.) Premises & Operations Liability
  - 2.) Bodily Injury and Property Damage Liability
  - 3.) Independent Contractors Liability
  - 4.) Contractual Liability

5.) Products and Completed Operations Liability

3. Contractor shall agree to keep in continuous force Commercial General Liability coverage for the length of the contract.

**INSURANCE LIMITS OF LIABILITY**

The insurance required shall be written for not less than the following, or greater if required by law and shall include Employer's liability with limits as prescribed in this contract:

	<u>LIMIT</u>
1. Workers' Compensation	
1.) State	Statutory
2.) Employer's Liability	\$500,000 each accident
2. Business Automobile	\$1M each accident (A combined single limit)
3. Commercial General Liability	\$1M each occurrence for Bodily Injury & Property Damage \$1M each occurrence Products and completed operations
4. Personal and Advertising Injury	\$1M each occurrence

**NOTICE OF CLAIMS OR LITIGATION**

The Contractor agrees to report any incident or claim that results from performance of this Agreement. The County representative shall receive written notice in the form of a detailed written report describing the incident or claim within ten (10) days of the Contractor's knowledge. In the event such incident or claim involves injury and/or property damage to a third party, verbal notification shall be given the same day the Contractor becomes aware of the incident or claim followed by a written detailed report within ten (10) days of verbal notification.

**INDEMNIFICATION & HOLD HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the County, its officers and employees from liabilities, damages, losses, and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence,

recklessness, or wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of this contract.

#### **CERTIFICATE OF INSURANCE**

1. Certificates of Insurance indicating the project name, number, and evidencing all required coverage and if applicable any State of Florida approved Workers' Compensation Exemption must be submitted not less than 10 days prior to the commencement of any of the work. The certificate holder(s) shall be as follows: Okaloosa County BCC, 5479A Old Bethel Road, Crestview, Florida, 32536.
2. The contractor shall provide a Certificate of Insurance to the County with a thirty (30) day prior written notice of cancellation; ten (10 days' prior written notice if cancellation is for nonpayment of premium).
3. In the event that the insurer is unable to accommodate the cancellation notice Requirement, it shall be the responsibility of the contractor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and Addressed to the Okaloosa County Purchasing Department at 5479-A Old Bethel Road, Crestview, FL 32536.
4. In the event the contract term goes beyond the expiration date of the insurance policy, the contractor shall provide the County with an updated Certificate of insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The County reserves the right to suspend the contract until this requirement is met.
5. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
6. All certificates shall be subject to Okaloosa County's approval of adequacy of protection.
7. All deductibles or SIRs, whether approved by Okaloosa County or not, shall be the Contractor's full responsibility.
8. In no way will the entities listed as Additional Insured be responsible for, pay for, be damaged by, or limited to coverage required by this schedule due to the existence of a deductible or SIR.



## **GENERAL TERMS**

Any type of insurance or increase of limits of liability not described above which, the Contractor required for its own protection or on account of statute shall be its own responsibility and at its own expense.

Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this contract shall be deemed unacceptable and shall be considered breach of contract.

The carrying of the insurance described shall in no way be interpreted as relieving the Contractor of any responsibility under this contract.

Should the Contractor engage a subcontractor or sub-subcontractor, the same conditions will apply under this Agreement to each subcontractor and sub-subcontractor.

The Contractor hereby waives all rights of subrogation against Okaloosa County and its employees under all the foregoing policies of insurance.

## **EXCESS/UMBRELLA INSURANCE**

The Contractor shall have the right to meet the liability insurance requirements with the purchase of an EXCESS/UMBRELLA insurance policy. In all instances, the combination of primary and EXCESS/UMBRELLA liability coverage must equal or exceed the minimum liability insurance limits stated in this Agreement.



## **Attachment "C"** **Civil Rights Clauses**

### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), as applicable, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).



**Attachment "D"**

**Vendors on Scrutinized List Form**

By executing this Certificate Foley Products Company, the bid proposer, certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5), Florida Statutes, the County may disqualify the bid proper immediately or immediately terminate any agreement entered into for cause if the bid proposer is found to have submitted a false certification as to the above or if the Contractor is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement. If the County determines that the bid proposer has submitted a false certification, the County will provide written notice to the bid proposer. Unless the bid proposer demonstrates in writing, within 90 calendar days of receipt of the notice, that the County's determination of false certification was made in error, the County shall bring a civil action against the bid proposer. If the County's determination is upheld, a civil penalty shall apply, and the bid proposer will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three years after the date of County's determination of false certification by bid proposer.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

DATE: 4/24/24

SIGNATURE: Todd Swenson

COMPANY: Foley Products Company, LLC

NAME: Todd Swenson  
(Typed or Printed)

ADDRESS: 354 Newnan Crossing Bypass  
Newnan, GA 30268

TITLE: SVP

E-MAIL: todd.swenson@foleyproducts.com

PHONE NO.: 860-461-5492