

INTERGOVERNMENTAL SERVICE AGREEMENT

This Intergovernmental Service Agreement (“Agreement”) is entered into by and between the Baldwin County Commission (hereinafter “County”) and the City of Foley, Alabama (hereinafter “City”), as follows:

RECITALS

Whereas, the County is the duly formed governing body in and for Baldwin County, Alabama, and the City is an incorporated municipality of the State of Alabama; and

Whereas, the County and the City are authorized under Alabama law to control, manage, supervise, regulate, repair, maintain, and improve (hereinafter collectively “control”) certain public roads inside their respective jurisdictions; and

Whereas, the County and the City acknowledge and agree that the County currently maintains County Road 20 from South Hickory Street east to 450 feet west of South Pine Street (approximately 0.60 miles) (the “County Portion of CR20”), and the City currently maintains County Road 20 from 450 feet west of South Pine Street east to Alabama Highway 59 (approximately 0.40 miles) (the “City Portion of CR20”); and

Whereas, the current corporate limits of the City of Foley in the vicinity of County Road 20 are as shown on Exhibit “A” which is attached hereto and incorporated herein by reference, which shows the land on which the Allison Pointe Apartments are currently located along some of the County Portion of CR20 as being inside the corporate limits of the City; and

Whereas, the County and the City acknowledge and agree that County Road 20 from South Hickory Street east to Alabama Highway 59 is in need of certain widening and resurfacing improvements; and

Whereas, the City has requested that the County assist the City in its efforts to fund a County Road 20 Widening and Resurfacing Project; and

Whereas, the County has been approved by the Alabama Department of Transportation for an Alabama Transportation Rehabilitation and Improvement Program (ATRIP) grant that will help fund the County Road 20 Project; and

Whereas, the County agrees in FY 2014 to provide funds in the amount of \$195,000.00 for construction costs and construction engineering and inspection for the County Road 20 Widening and Resurfacing ATRIP Project (hereinafter “County Road 20 ATRIP Project”); and

Whereas, the County desires to transfer to the City the maintenance responsibility for the portions of County Road 20 from South Hickory Street east to 450 feet west of South Pine Street that are then inside the corporate limits of the City at the conclusion of the work to perform these improvements, which is depicted on Exhibit A; and

Whereas, the County desires to transfer to the City the maintenance responsibility for the remaining portions of County Road 20 from South Hickory Street east to 450 feet west of South Pine Street as soon as these remaining areas are annexed into the corporate limits of the City; and

Whereas, the City agrees to accept road maintenance responsibility of the portions of County Road 20 from 450 feet west of South Pine Street west to South Hickory Street (approximately 0.60 miles) once these areas are annexed into the corporate limits of the City; and

Whereas, the County and the City now wish to enter into this Agreement to provide for their joint cooperation to fund the preliminary engineering and matching costs for the County Road 20 ATRIP Project; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, the County and the City do hereby agree as follows:

1. **Recitals:** The recitals set out above are incorporated into this Agreement, as though the same were set out in full in this paragraph.
2. **Purpose:** The parties acknowledge and agree that the purpose of this Agreement is to fund the preliminary engineering and associated construction costs for the County Road 20 ATRIP Project as described or depicted on Exhibit “B” attached hereto and incorporated herein.
3. **Maintenance Responsibility and Ownership Retained:** The County and the City, at all times including during the effective term of this Agreement and thereafter, shall retain exclusive responsibility for and control over their respective portions of road maintenance responsibility of County Road 20. The County obtains no rights, responsibilities or control for the City Portion of CR20 as a result of the duties and/or obligations contained anywhere herein either during or following the effective term of this Agreement. Except as set forth herein and in accordance with applicable state law, the City obtains no rights, responsibilities or control for the County Portion of CR20 as a result of the duties and/or obligations contained anywhere herein either during or following the effective term of this Agreement; provided, that when the County Portions of CR20 are annexed into the corporate limits of the City, the City shall take over road and maintenance responsibility for those portions of the County Portion of CR20.

Notwithstanding the foregoing, for those portions of the County Portion of CR20 that remain under the County's exclusive control following the completion of the County Road 20 ATRIP Project, the City agrees to reimburse the County for the County's reasonable and necessarily incurred costs to maintain said portions of the County Portion of CR20 in the future (i.e., for projects that come after the County Road 20 Project) for the maximum amount of time allowed by Code of Alabama, 11-102-1, et seq. pertaining to Common Service Contracts. The County, if it intends to seek reimbursement from the City, will give the City notice prior to incurring any reimbursable costs as to the County's need and intention to perform specific upkeep or maintenance work on said portion of County Road 20, and the City and the County hereby agree to work together in good faith to come to an agreement as to the need for the work, the scope of the work, the manner of completion of the work, and payment terms premised on the City's responsibility to reimburse the County for its reasonable and necessary expenses pursuant to this agreement.

4. **No Joint Ownership of Property:** The parties acknowledge and agree that they will not jointly acquire, own, or otherwise come into joint or common possession of any property as a result of or in relation to this Agreement.

5. **Financing and Budgeting:** Each party shall be responsible for financing the obligations undertaken by that party hereunder, and shall not be responsible for financing, or in any other manner contributing to the actual costs or expenses of the obligations undertaken by the other party unless expressly identified herein.
6. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
7. **Term:** The term of this Agreement shall be for thirty-six (36) months, except as otherwise provided in this Agreement. This document may be amended only upon written approval by the Parties hereto, and any such amendment shall be approved by the same method by which this original Agreement has been approved by the Parties.
8. **Services to be Performed by County (the Project):**
 - A. The County will comply with all necessary local, State and Federal rules, regulations and laws applicable to this Agreement and the ATRIP grant.
 - B. The County will construct the County Road 20 ATRIP Project improvements in accordance with the ATRIP grant, and the County will fund without reimbursement from the City \$195,000.00 plus one-half (1/2) of the cost overruns of the amount the County spends as local matching money on any additional construction costs, construction engineering and inspection, utility relocation and any overruns and unknowns during construction of the County Road 20 ATRIP Project that exceed the initial contract amounts and that are not covered by ATRIP, if any.
 - C. The County will invoice the City for funding agreed to below.
9. **Services to be Performed by City:**
 - A. The City agrees to reimburse the County for engineering and survey services performed by Volkert, Inc. for the County up to a maximum of \$165,846.00.
 - B. The City agrees to reimburse the County for construction costs, construction engineering and inspection, and utility relocation incurred by the County for the County Road 20 ATRIP Project as local matching funds after the first \$195,000.00 is funded without reimbursement by the County up to the initially awarded contract amount (i.e., if the initially awarded contracts for these items of work are in an amount that would call for \$250,000 of local matching funds, then the City would be responsible for reimbursing the County \$55,000 pursuant to this provision).
 - C. The City agrees that it will reimburse the County one-half (1/2) of the amount the County spends as local matching funds on any additional construction costs, construction engineering and inspection, utility relocation and any overruns and unknowns during construction of the County Road 20 ATRIP Project that exceed the initial contract amounts and that are not covered by ATRIP, if any.
 - D. The City agrees to accept maintenance of those parts of the County Portion of CR20 upon substantial completion of the County Road 20 ATRIP Project that are then in the corporate limits of the City as depicted on Exhibit A.

- E. The City agrees to and shall accept maintenance of those parts of the County Portion of CR20 as they are annexed into the corporate limits of the City in the future.
- F. Upon acceptance of maintenance of those parts of the County Portion of County Road 20 by the City pursuant to this Agreement or in accordance with applicable state law, the County shall have no further responsibility or liability for the maintenance of those portions of County Road 20 accepted for maintenance by the City.
10. **Termination and Notice:** Prior to the beginning of construction, either party may terminate this Agreement, with or without cause, upon written notice to the other party. A party's said notice shall be deemed effective, and the Agreement deemed terminated, thirty (30) days after the date such notice is mailed by certified mail to the other party. In the event of termination by either party, the County and the City shall remain financially responsible for their portions of the funding of the project through the effective date of the requisite termination notice. In any event, the City shall be responsible for all engineering costs incurred up to \$165,846.00 for services provided by Volkert, Inc. After construction begins, the County alone shall have the authority and right to terminate this Agreement. The County's notice of termination shall be deemed effective, and the Agreement deemed terminated, thirty (30) days after the date such notice is mailed by certified mail to the other party. In the event of termination after the construction begins, the County and City shall remain financially responsible for their portions of the funding of the project through the effective date of the requisite termination notice. All notices provided for herein shall be sent as follows:

To City: City of Foley
P.O. Box 1750
Foley, Alabama 36536

To County: Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

11. **Condition:** The City accepts the improvement, work, property, product, funds and services of the County as a result of the Project in its "WHERE IS", "AS IS", condition and acknowledges that the County has made no representation or warranty to the City as to, and has no obligation for the condition of the improvements, work, property, product, funds and services of the County. However, nothing contained herein shall prevent either party from good faith performance of the services to be performed under the terms of this agreement including without limitation the remediation or correction of any work or services performed by either party hereunder. The City assumes the risk of any latent or patent defects or problems that are or may be contained in the improvements, work, property, product, funds and services of the County or City on the portions of the project that are inside the corporate limits of the City. The City agrees that the County shall not be liable for any injury, loss or damage on account of any such defects or problems. The City waives and releases the County from any claims for injury to persons or damage to the personal property by reason of the condition of the improvements, work, property, product, funds and services of the County or otherwise.

Furthermore, the City shall defend, indemnify, and hold the County harmless from and against all demands, actions, and claims of any description whatsoever, for property damage, personal injury (including death), actions in trespass, and all other claimed loss, injury or

damage, including, but not limited to, attorneys' fees and costs, arising out of, relating to, or resulting from any and all acts or omissions in relation to the obligations hereunder for the portion of the work occurring in the City.

The above provisions contained in this section 11 shall not apply to any private contractor or subcontractor performing improvements or work on behalf of the County and, to the extent not exclusive of the County, the City shall be entitled to the benefit of all warranties, representations and legal or equitable rights available to it, or available to the County, under Alabama law or pursuant to the terms of all agreements between such private contractor or subcontractor and the County.

All guarantees, duties, representations, assurances, without limitation, contained within this Agreement shall survive and exist beyond the date of termination or expiration of this Agreement, and time, or the lapse thereof, shall not be used for, or argued as a defense for the City, against the same.

Nothing contained herein shall be construed to limit or modify the laws of Alabama as the same may apply to the County or City or in any way diminish any immunity, absolute or qualified, to which the County and City are otherwise entitled by law.

The County agrees to construct the County Road 20 Project in accordance with the plans prepared for the project, which the City will first review and approve, and the County agrees to advise the City of any known construction defects or deviations from the plans or scope of work of the contractors.

12. **Entire Agreement:** This Agreement represents the entire and integrated agreement between the County and City and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.
13. **Both Parties Contributed Equally to the Agreement.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the County and City have contributed substantially and materially to the preparation of this Agreement.
14. **Failure to Strictly Enforce Performance:** The failure of either party to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute a default or be construed as a waiver or relinquishment of the right of a party to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.
15. **Assignment:** Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered without a prior written agreement providing for such assignment, transfer, or other encumbrance, signed by the parties.
16. **Choice of Law:** The parties acknowledge and agree that this Agreement shall in all respects be governed by the laws of the state of Alabama, including without limitation all issues relating to capacity, formation, interpretation, and available remedies, without regard to Alabama conflict of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below.

COUNTY:
BALDWIN COUNTY

ATTEST:

BY: _____ /
J. Tucker Dorsey /Date
Chairman

_____/
David A. Z. Brewer / Date
County Administrator

CITY:
THE CITY OF FOLEY

ATTEST:

BY: _____ /
John Koniar /Date
Mayor

_____/
City Clerk / Date

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that J. TUCKER DORSEY, as Chairman of the Baldwin County Commission, and DAVID A. Z. BREWER, County Administrator of the Baldwin County Commission, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal, this the _____ day of _____, 2013.

Notary Public
My Commission Expires: _____

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, John Koniar, whose name as Mayor of the City of Foley and Vickey Southern, whose name as City Clerk of the City of Foley, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said City of Foley.

Given under my hand and official seal, this the _____ day of _____, 2013.

Notary Public
My Commission Expires: _____