

INTERGOVERNMENTAL ROADWAY CONSTRUCTION AGREEMENT

This INTERGOVERNMENTAL ROADWAY CONSTRUCTION AGREEMENT (this “Agreement”) is made and entered into this the ____ day of _____, 2025 (the “Effective Date”), by and among the Baldwin County Commission (the “County”) and the City of Foley (the “City”), these individual entities collectively referred to herein as the “Parties”.

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 certain public roads or rights-of-way inside their respective jurisdictions; and

WHEREAS, the Parties have determined that certain roadway and pedestrian improvements on James Road starting at its intersection with Brinks Willis Road, southward approximately 5,280 feet, as depicted on **Exhibit A** hereto (the “Project”), are necessary to (i) improve road access for the citizens and residents of the City and the County, and (ii) promote the safety, convenience, order, prosperity and welfare of the citizens and residents of the City and the County; and

WHEREAS, the Parties wish to set forth their mutual agreements and understandings regarding the construction of funding for such improvements.

NOW, THEREFORE, in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **The Project.**

(a) **The City’s Obligations.** The City shall contribute funding equal to half (50%) of the total costs, fees and expenses of the Project, including all costs incurred for right-of-way, design, utility relocations, permitting, construction and CE&I. The City agrees to construct or cause to be constructed, subject to any plan alterations deemed necessary by the City and the County, the Project to the satisfaction of the City within thirty-six (36) months of the Effective Date, subject to environmental permitting. The City agrees to utilize City employee time and resources to facilitate designing the Project, facilitate right-of-way acquisition, coordinate utility relocations, and facilitate the CE&I required to construct the Project. The City agrees that it shall let the Project out for public bid, accept the right-of-way containing the Project and be responsible for maintenance of James Road located within the Project after the completion of construction.

(b) The County's Obligations. The County shall tender payment to the City equal to half (50%) of the total costs, fees and expenses of the Project, including all costs incurred for design, utility relocations, right-of-way acquisitions, permitting, construction, and CE&I (the "County Contribution"). The County shall make payments to the City as follows:

- i. Half (50%) of the cost of design within thirty (30) days following the completion of the design work and receipt of an invoice from the City.
- ii. Half (50%) of the cost of utility relocations within thirty (30) days following the completion of all utility relocations and receipt of an invoice from the City.
- iii. Half (50%) of the cost of right-of-way acquisition within thirty (30) days following the completion of all right-of-way acquisition and receipt of an invoice from the City.
- iv. Half (50%) of the cost of permitting within thirty (30) days following the submission by the City of the permit applications and receipt of an invoice from the City.
- v. Half (50%) of the cost of construction within thirty (30) days following the completion of all construction and receipt of an invoice from the City.
- vi. Half (50%) of the cost of CE&I within thirty (30) days following the completion of all CE&I and receipt of an invoice from the City.

(c) Availability of Funds.

- i. Notwithstanding the foregoing, if the total cost of the Project exceeds \$4,200,000, the City shall have no obligation to enter into such contract and the County shall have no obligation to provide the County Contribution.
- ii. Notwithstanding the foregoing, if the County Contribution is not made available to the City, the City shall have no obligation to construct the Project.

2. **Representations.**

(a) Representations of the City. The City represents and covenants as follows:

- i. The City has the full power and authority to enter into this Agreement and to carry out its respective obligations hereunder.
- ii. There is no action or proceeding pending or, insofar as the City knows, threatened against the City which could impact upon the City's right, power, and authority to enter into this Agreement or to otherwise carry out its obligations hereunder.

- iii. The bids, permits, contracts, right of way acquisitions, designs, engineering and other activities under this Agreement shall be performed by the City in compliance with all applicable laws, rules, and regulations.

(b) Representations of the County. The County represents and covenants as follows:

- i. The County has the full power and authority to enter into this Agreement and to carry out its respective obligations hereunder.
- ii. There is no action or proceeding pending or, insofar as the County knows, threatened against the County which could impact upon the County's right, power, and authority to enter into this Agreement or to otherwise carry out its obligations hereunder.
- iii. The County's performance under this Agreement shall be in compliance with all applicable laws, rules, and regulations.

3. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated by mutual agreement of the Parties or until the last of the obligations hereunder has expired.

4. **Relationship of the Parties.** In making and performing this Agreement, the Parties are acting and shall act as independent contractors. Neither the City, nor the County is, nor will either be deemed to be, an agent, legal representative, joint venturer, or partner of the other for any purpose. Except as expressly permitted hereunder, neither the City, nor the County will be entitled to (a) enter into any contracts in the name of or on behalf of the other, (b) pledge the credit of the other in any way or hold itself or themselves out as having authority to do so, or (c) make commitments or incur any charges or expenses for or in the name of the other. Neither the City's, nor the County's personnel are, nor shall they be deemed to be at any time during the term of this Agreement, employees of the other. Except as specifically set forth above with respect to the costs, fees or expenses of the respective Project, each Party shall each be responsible for its own costs incurred, whether internally or for its outside legal counsel, consultants and advisors, in conjunction with this Agreement.

5. **Force Majeure.** No Party shall be liable for any default or delay in performance of its obligations hereunder, to the extent such default or delay is attributable to events beyond the reasonable control of such Party, including without limitation acts of God, acts of public enemies, epidemics, floods, fires, strikes or other serious labor disputes, civil disturbances, and earthquake conditions; provided, however, that the Party subject to any such event shall use its commercially reasonable efforts to overcome the event as soon as is reasonably practicable and to continue its performance as required hereunder. Performance times shall be considered extended for a period of time equivalent to the time lost due to such an event.

6. **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned or withheld, and any attempt to make such assignment shall be null and void.

7. **Binding Effect.** This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and inure to the benefit of the Parties and each of their respective successors and permitted assigns.

8. **Further Assurances.** The Parties shall and shall cause their respective affiliates to take all appropriate action and execute or cause to be executed all documents of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof.

9. **Amendment.** No amendment, modification, or supplement of any provision of this Agreement or any exhibit hereto will be valid or effective unless made in writing and signed by the duly authorized representatives of the Parties.

10. **Governing Law.** This Agreement shall be governed by and performed in accordance with the laws of the State of Alabama. The Parties agree that venue concerning any dispute regarding the terms or enforcement of this Agreement shall only be in the State Courts of Alabama in Baldwin County.

11. **Severability.** Any of the provisions of this Agreement determined to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or enforceability of any of the provisions of this Agreement.

12. **Negotiated Agreement.** The Parties each hereby acknowledge that the terms and language of this Agreement were the result of negotiations among the Parties and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against any particular Party. Any controversy over construction of this Agreement shall be decided without regard to events of authorship or negotiation.

13. **Counterparts; Electronic Signature.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which together shall constitute one and the same instrument. Transmission of images of signed signature pages by facsimile, email or other electronic means shall have the same effect as the delivery of manually signed documents.

14. **Changes in Scope.** Neither Party may modify the scope of the Project without written authorization from both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

[Remainder of Page Intentionally Left Blank]

[Signature Page to Follow]

**BALDWIN COUNTY COMMISSION,
BALDWIN COUNTY, ALABAMA**

By: _____
Matthew P. McKenzie, Chairman
Baldwin County Commission

ATTEST: _____
Roger H. Rendleman
County Administrator

CITY OF FOLEY, ALABAMA

By: _____
Ralph Hellmich, Mayor

ATTEST: _____
Kathryn Taylor, City Clerk