



**ALABAMA
DEPARTMENT OF TRANSPORTATION**

Aeronautics Bureau
1409 Coliseum Boulevard
Montgomery, Alabama 36130-3050
Phone (334) 242-6820 FAX (334) 353-6540
Internet <http://www.dot.state.al.us>



Robert Bentley
Governor

John R. Cooper
Transportation Director

August 25, 2016

The Honorable John Konair, Mayor
City of Foley, Alabama
Post Office Drawer 1750
Foley, AL 36536

Dear Mayor Konair:

In response to the City of Foley, Alabama's application for state funds dated 7/18/2016, I am pleased to advise you that the Transportation Director has approved the following funds for improvements to the Foley Municipal Airport:

<u>Project Description</u>	<u>Amount</u>
Rehabilitate airport drainage, Phase 2 (reimbursement) Project No: 3-01-0031-014-2016	\$ 17,691.00

The City of Foley, Alabama should coordinate all phases of the project through the Aeronautics Bureau office in Montgomery.

A copy of the funding agreement for the above project accompanies this letter. Please be aware that two (2) signed copies of the funding agreement must be received by the Aeronautics Bureau within fourteen (14) calendar days of its receipt. Failure to do so will result in the withdrawal of the STATE'S funding offer. Please be aware that no state funds will be paid for the above project until the funding agreement has been fully executed by the state. When the agreement is fully executed by Governor Bentley's signature, one copy will be returned for your file.

If you have any questions, please contact either the staff or me, at (334) 242-6820.

Sincerely,


John C. Eagerton IV, D.P.A.
Chief, Aeronautics Bureau

Cc: Governor Robert Bentley
U.S. Senator Richard Shelby
U.S. Senator Jeff Sessions
Congressman Bradley Byrne
Senator Trip Pittman
Representative Stephen A. McMillan
Mr. Rans Black, FAA/ADO
Aeronautics Bureau

2016
AIRPORT IMPROVEMENT FUNDING AGREEMENT

BETWEEN THE STATE OF ALABAMA
Department of Transportation

And the

CITY OF FOLEY, ALABAMA

This Airport Improvement Funding Agreement is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as the STATE; and the City of Foley, Alabama, hereinafter referred to as the AIRPORT SPONSOR; for the purpose(s), as further described in the "SCOPE OF SERVICES." Pursuant to the provisions of Section 23-1-361, Code of Alabama 1975, the STATE shall be designated by the AIRPORT SPONSOR as the agent to receive and disburse to the AIRPORT SPONSOR all federal funds to be used in the payment of the costs of said project(s) or as reimbursement for costs incurred.

A. SCOPE OF SERVICES

A.1. Purpose. The purpose of this Airport Improvement Funding Agreement shall be to provide funding assistance for a project to further develop the Foley Municipal Airport as authorized by Section 23-1-360, Code of Alabama 1975. The AIRPORT SPONSOR shall be the recipient of funds from this Agreement for an airport improvement project as more particularly described in the AIRPORT SPONSOR'S funding application dated 7/18/2016 that is incorporated into this Agreement by reference as if fully set forth herein and maintained in the files of the Alabama Department of Transportation Aeronautics Bureau.

A.2. Project Description and Funding Source. The description of the project or projects and the amount and source of funds to which this Agreement is applicable are as follows:

A.2.a. Project Description:

Rehabilitate airport drainage, Phase 2 (reimbursement)
Project No: 3-01-0031-014-2016

A.2.b. Amount and Source of Funds:

<u>Source of Funds</u>	<u>Amount of Funds</u>
Federal Aviation Administration	\$ 318,438.00
State Airport Development Fund	\$ 17,691.00
State Surplus Military Field Fund	\$ 0.00
AIRPORT SPONSOR	\$ 17,691.00
Total Project Cost	\$ 353,820.00

FUNDING TERM

- B.1. Funding Term. This Funding Agreement shall be effective for work performed by the AIRPORT SPONSOR for a period of two (2) years from the date of the AIRPORT SPONSOR'S funding application to the state. With the exception of any planning or engineering design work that is performed expressly for the project(s) described in Section A.2. of this Funding Agreement, the STATE shall have no obligation to pay for services rendered by the AIRPORT SPONSOR which are performed prior to the starting date or after the ending date set forth in this section.
- B.2. Project Start-up. The project to which this Funding Agreement applies must be started within six (6) months of the commencement date specified in Section B.1. of this Funding Agreement. If the project is not started within six (6) months of this Funding Agreement's commencement date, this Funding Agreement may be cancelled at the sole discretion of the Director of the Alabama Department of Transportation.
- B.3. Term Extension. The STATE reserves the right to extend this Funding Agreement for an additional one (1) year, provided that the STATE notifies the AIRPORT SPONSOR in writing of its intention to do so prior to the Agreement's ending date. An extension of the term of this Agreement will be accomplished through a written amendment to the Agreement that is signed by both parties. If the extension of the Agreement necessitates additional funding beyond that which was included in the original Agreement, the increase in state funding will also be accomplished through a written amendment to the Agreement.

B. PAYMENT TERMS AND CONDITIONS

- C1. Maximum Liability. In no event shall the maximum funding liability of the STATE under this Agreement exceed Seventeen Thousand Six Hundred Ninety One Dollars and 0/100 [\$ 17,691.00]. The Grant Agreement Engineering Worksheet that accompanies the application shall constitute the maximum amount due the AIRPORT SPONSOR for the project or projects described herein and all of the AIRPORT SPONSOR'S obligations hereunder. The Grant Agreement Engineering Worksheet line items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred by the AIRPORT.

For a project or projects involving funds made available by the Federal Aviation Administration, the maximum liability of the STATE shall be reduced to equal an amount of five (5) percent of the total project cost if the project(s) to which this Funding Agreement applies is completed for an amount less than that shown on the AIRPORT SPONSOR'S funding application to the STATE.

For a project or projects involving STATE and AIRPORT SPONSOR funds only, the maximum liability of the STATE shall be reduced to equal an amount of fifty (50) percent of the total project cost if the project(s) to which this Funding Agreement applies is completed for an amount less than that shown on the AIRPORT SPONSOR'S funding application to the STATE.

- C.2. Method of Payment. The AIRPORT SPONSOR shall be compensated for actual reasonable and necessary costs based upon the Grant Agreement Engineering Worksheet, not to exceed the maximum liability established in Section C.1. Upon progress toward completion of the project, as described in Section A of this Agreement, the AIRPORT SPONSOR shall submit monthly invoices, in form and substance acceptable to the STATE, with all of the necessary supporting documentation, prior to any reimbursement of allowable costs.

- C.3. [Reserved]
- C.4. Supplemental Agreements. If the cost of the project described herein increases during the progress of the work, the parties agree to enter into a Supplemental Agreement setting out the respective financial obligations of the STATE and the AIRPORT.
- C.5. Travel Compensation. The AIRPORT SPONSOR shall not be compensated for travel, meals, or lodging.
- C.6. Expenditures and Accounting. The expenditure of funds made available through this Agreement shall adhere to the line item amounts in the attached Grant Agreement Engineering Worksheet. The AIRPORT SPONSOR may request revisions of the Grant Agreement Engineering Worksheet line items by letter, giving full details supporting such request, provided that such revisions do not increase the total Grant Agreement Engineering Worksheet amount. Grant Agreement Engineering Worksheet line item revisions shall not be made without prior, written approval by the STATE in which the terms of the approved revisions are explicitly set forth. Any increase in the total Grant Agreement Engineering Worksheet amount shall require a written amendment to this Agreement.

The AIRPORT SPONSOR shall submit a final expenditure report within forty-five (45) days following of the completion of the project or projects covered by this Agreement. Said report shall be in form and substance acceptable to the STATE. The STATE will not be responsible for the payment of claims that are submitted later than the forty-five (45) days required for the final expenditure report.

If total payments made by the STATE for the period of this Agreement exceed the qualifying expenditures, the AIRPORT SPONSOR shall refund the STATE the difference. The refund shall accompany the final expenditure report required by this section of the Agreement.

The AIRPORT SPONSOR'S accounting records must be closed out at the end of the Funding period in such a way that no reimbursable expenditures or revenue collections are carried forward.

- C.7. Indirect Costs and Allocation of Costs. Should the AIRPORT SPONSOR request reimbursement for indirect costs, the AIRPORT SPONSOR must submit to the STATE a copy of the indirect cost rate approved by the cognizant federal agency and the STATE. The AIRPORT SPONSOR will be reimbursed indirect costs as detailed in the attached Grant Agreement Engineering Worksheet and as substantiated by the approved indirect cost rate. Any indirect costs will be paid by the STATE from the budgeted amount and will not increase the total amount obligated by this Agreement. Once the AIRPORT SPONSOR makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the funding period. Any changes in the approved indirect cost rate must have prior approval by the cognizant federal agency and the STATE.

If the indirect cost rate is provisional during the term of this Agreement, once the rate becomes final, the AIRPORT SPONSOR agrees to remit any overpayment to the STATE, and subject to the availability of funds the STATE agrees to remit any underpayment to the AIRPORT.

If any part of the costs to be reimbursed under this Funding Agreement are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the policies of the STATE.

- C.8. Payment of Invoice. The payment of the invoice by the STATE shall not prejudice the STATE'S right to object to or question any invoice or matter in relation thereto. Such payment by the STATE shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- C.9. Unallowable Costs. The AIRPORT SPONSOR'S invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the STATE, on the basis of audits or monitoring conducted in accordance with the terms of this Agreement, not to constitute allowable costs.
- C.10. Deductions. The STATE reserves the right to deduct from amounts which are or shall become due and payable to the AIRPORT SPONSOR under this or any Funding Agreement between the AIRPORT SPONSOR and the STATE any amounts which are or shall become due and payable to the STATE by the AIRPORT.
- C.11. [Reserved]
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The STATE is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Alabama State laws and regulations.
- D.2. Modification and Amendment. This Agreement may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Alabama State officials in accordance with applicable Alabama State laws and regulations.
- D.3. Termination for Convenience. The STATE may terminate the Agreement by giving the AIRPORT SPONSOR at least thirty (30) days written notice before the effective termination date. In that event, the AIRPORT SPONSOR shall be entitled to receive equitable compensation for satisfactory, authorized services completed as of the termination date.
- D.4. Withdrawal of STATE Funding Offer for Failure to Make Timely Acceptance. The AIRPORT SPONSOR shall sign and return two (2) copies of this Funding Agreement to the STATE within fourteen (14) calendar days of its receipt by the AIRPORT SPONSOR'S designated representative. If the AIRPORT SPONSOR fails to do so, the STATE funding offer shall be withdrawn.
- D.5. Termination for Cause. If the AIRPORT SPONSOR fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the AIRPORT SPONSOR violates any terms of this Agreement as determined by the STATE, the STATE shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the AIRPORT SPONSOR shall not be relieved of liability to the STATE for damages sustained by virtue of any breach of this Agreement by the AIRPORT.
- D.6. Projects to be Supervised by Professional Engineer. In compliance with Section 34-11-10, Code of Alabama 1975, the AIRPORT SPONSOR agrees not to engage in an airport improvement construction project without the engineering plans, specifications, and estimates having been prepared by and the construction performed under the direct supervision of a professional engineer. This provision does not apply to an airport improvement construction project when the total cost of the completed project does not exceed twenty thousand dollars (\$20,000.00).
- D.7. [Reserved]

- D.8. Subcontracting. The AIRPORT SPONSOR shall not assign this Agreement or enter into a subcontract for any of the services performed under this Agreement without first obtaining the written approval of the STATE. If an assignment or subcontract is approved by the STATE, such shall be subject to all of the terms and conditions of this Agreement. Notwithstanding any use of approved subcontractors, the AIRPORT SPONSOR shall be the prime contractor and shall be responsible for all work performed.
- D.9. Conflicts of Interest. The AIRPORT SPONSOR warrants that no part of the total Funding Amount shall be paid directly or indirectly to an employee or official of the State of Alabama as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the AIRPORT SPONSOR in connection with any work contemplated or performed relative to this Agreement.
- D.10. Lobbying. The AIRPORT SPONSOR certifies, to the best of its knowledge and belief, that:
- D.10.a. No federally appropriated funds have been paid or will be paid, by or on behalf of the AIRPORT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- D.10.b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the AIRPORT SPONSOR shall complete and submit Standard Form-LLL, "Disclosure Form for Reporting Lobbying," in accordance with its instructions.
- D.10.c. The AIRPORT SPONSOR shall require the language of this certification to be included in the award documents for all sub-awards at all levels (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.
- D.11. Nondiscrimination. The AIRPORT SPONSOR hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the AIRPORT, on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Alabama State constitutional, or statutory law. The AIRPORT SPONSOR shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.12. Records and Audits. The AIRPORT SPONSOR shall maintain documentation for all charges against the STATE under this Agreement. The books, records, and documents of the AIRPORT, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the STATE, or its duly appointed representatives.

A final audit will be made by the AIRPORT SPONSOR of all project records after completion of the project and a copy of the audit will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414.

A final settlement will be made between the parties as reflected by the final audit and this Agreement.

- D.13. Monitoring. The activities conducted and records maintained by the AIRPORT SPONSOR pursuant to this Agreement shall be subject to monitoring and evaluation by the STATE, or its duly appointed representatives.
- D.14. Progress Reports. The AIRPORT SPONSOR shall submit ninety (90) day progress reports to the STATE, unless otherwise instructed, and will immediately notify the STATE of any significant problems encountered that may delay the start-up or completion of the project herein described.
- D.15. Procurement. If the other terms of this Agreement allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures in accordance with Alabama State law. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the AIRPORT SPONSOR'S compliance with applicable federal procurement requirements.

The AIRPORT SPONSOR shall obtain prior written approval from the STATE before purchasing any equipment under this Agreement.

- D.16. Strict Performance. Failure by any party to the Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.17. Independent Contractor. The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.18. State Liability. The STATE shall have no liability except to provide funding assistance as provided herein.
- D.19. Force Majeure. The obligations of the parties to the Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care, including but not limited to, acts of nature, riots, wars, strikes, epidemics or any other similar cause.
- D.20. State and Federal Compliance. The AIRPORT SPONSOR shall comply with all applicable state and federal laws and regulations in the performance of this Agreement.
- D.21. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' Agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.22. Severability. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

D.23. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.

E. SPECIAL TERMS AND CONDITIONS

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Agreement, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by facsimile transmission, electronic transmission (e-mail), by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number, electronic mail address, or postal address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The STATE:

Dr. John Eagerton, Chief
Alabama Department of Transportation Aeronautics Bureau
1409 Coliseum Boulevard
Montgomery, Alabama 36130

Phone: 334.242.6820
Fax: 334.353.6540
E-mail: eagertonj@dot.state.al.us

The AIRPORT:

The Honorable John Konair, Mayor
City of Foley, Alabama
Post Office Drawer 1750
Foley, AL 36536

Phone: 251-943-1545
Fax: 251-952-4014
Email: rkeith@cityoffoley.org

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is confirmed telephonically by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the STATE reserves the right to terminate the Agreement upon written notice to the AIRPORT SPONSOR. Said termination shall not be deemed a breach of this Agreement. Upon receipt of the written notice, the AIRPORT SPONSOR shall cease all work associated with the Agreement. Should such an event occur, the

AIRPORT SPONSOR shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the AIRPORT SPONSOR shall have no right to recover from the STATE any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

If the Agreement term is to exceed more than one (1) fiscal year, then said Agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the Agreement in subsequent fiscal years.

- E.4. Funds Shall Not be Constituted as a Debt. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then the conflicting provision in the Agreement shall be deemed null and void.
- E.5. Alternative Dispute Resolution. When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.
- E.6. Work-papers Subject to Review. The AIRPORT SPONSOR shall make all audit, accounting, or financial analysis work-papers, notes, and other documents available for review by the STATE or its representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Agreement.
- E.7. Debarred Contractors. The AIRPORT SPONSOR shall not make any award hereunder to any Contractor, who at the time of the award, is debarred or otherwise prohibited from doing business with the State of Alabama.
- E.8. Hold Harmless. The AIRPORT SPONSOR agrees to indemnify and hold harmless the State of Alabama as well as its officers, agents, and employees in their official capacities from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the AIRPORT, its employees, or any person acting for or on its or their behalf relating to this Funding Agreement. The AIRPORT SPONSOR further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Agreement, defend itself, or otherwise enforce the obligations of the AIRPORT SPONSOR to the STATE.

In the event of any such suit or claim, the AIRPORT SPONSOR shall give the STATE immediate notice thereof and shall provide all assistance required by the STATE in the STATE'S defense. The STATE shall give the AIRPORT SPONSOR written notice of any such claim or suit, and the AIRPORT SPONSOR shall have full right and obligation to conduct the AIRPORT SPONSOR'S own defense thereof. Nothing contained herein shall be deemed to accord to the AIRPORT, through its attorney(s), the right to represent the State of Alabama in any legal matter.

- E.9. AIRPORT SPONSOR Assurances for Sale or Disposal of Land, Properties, Structures or Materials Related to Airport. The AIRPORT SPONSOR shall not sell, lease, or otherwise dispose of any AIRPORT SPONSOR property identified herein without the express prior written consent of the STATE, which consent will not be unreasonably

withheld. In the event that the STATE grants permission to sell or otherwise dispose of all or a portion of the forgoing real property in perpetuity, the AIRPORT SPONSOR shall be liable to pay the STATE a portion of the proceeds at fair market value as determined herein, resulting from the agreed upon sale price or fair market value. The funds collected from the sale of the property or fair market value will be divided in the same proportion as defined in this Agreement with said STATE funds reinvested into AIRPORT SPONSOR property in accordance with STATE funding policies and procedures.

Nothing herein shall prohibit the parties of this Agreement from agreeing to the reinvestment of said proportion of the proceeds or fair market value for rehabilitation or improvements in any remaining airport properties or structures or at a new airport site.

All properties purchased with assistance of this Agreement must include in the property deed a clause that states that "This property was purchased with the assistance of State and/or Federal funds, and may not be sold or otherwise disposed of without all agencies express written consent."

- E.10. Airport Operations. As consideration for receiving State and/or Federal funds under this Agreement, the AIRPORT SPONSOR shall operate and maintain the AIRPORT SPONSOR'S facilities for the use and benefit of the public on equal and reasonable terms, and without unjust discrimination against any type of legitimate aeronautical activity, for a period of twenty (20) years from the effective date of this Agreement. The airport shall not cease to be operated as a public-use airport for a period of twenty (20) years from the effective date of this Agreement without the express, written consent of the STATE. If at any time during the aforementioned twenty-year (20) period the airport ceases to be operated as a public-use facility, the AIRPORT SPONSOR shall reimburse the STATE an amount equal to all funds granted by the STATE for a period of twenty (20) years prior to the date the airport ceased to be a public-use facility.
- E.11. Exclusive Rights. For all agreements involving the acceptance of STATE funds, the AIRPORT SPONSOR agrees that it will not enter into any contracts or agreements that permit an exclusive right for the use of the airport by any person, firm, or corporation providing, or intending to provide, aeronautical services to the public. The AIRPORT SPONSOR further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activities, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity. The AIRPORT SPONSOR further agrees that it will terminate any exclusive right to conduct an aeronautical activity now existing at such airport before this Agreement is executed.
- E.12. Airport Fees and Rental Structure. By accepting the STATE funds made available under this Agreement, the AIRPORT SPONSOR agrees that it will establish and maintain a schedule of fees and rental rates for the AIRPORT SPONSOR'S land, facilities and services that will make the AIRPORT SPONSOR as financially self-sustaining as possible, taking into consideration such factors as the number of based aircraft, the volume of traffic and the economy of collection.

To comply with the intent of this section, the AIRPORT SPONSOR agrees that any airport property, aircraft fueling equipment, hangars, terminals, or other buildings that may be improved, installed or constructed with STATE funds provided under this Agreement shall be rented or leased to a tenant or tenants utilizing a schedule of periodic

rates or charges that has been established on the basis of fair market value considerations. The determination of fair market value by the AIRPORT SPONSOR must, at a minimum, take into consideration the appraised value of the land upon which the hangar, terminal or other building is or will be situated and the total cost incurred for the hangar, terminal or other building. The rate schedule established by the AIRPORT SPONSOR shall also contain an escalation provision to ensure that the fair market value rates remain current throughout the term of the lease between the AIRPORT SPONSOR and its tenants.

The AIRPORT SPONSOR further agrees that the lease or rental agreements it enters into with a tenant or tenants for any airport property, aircraft fueling equipment, hangars, terminals or other buildings that may be improved, installed or constructed with STATE funds shall be subject to review and approval by the STATE. In the event that the STATE determines that the rental rate schedule contained within the lease agreement is excessively low or has not been determined by fair market value considerations, the STATE reserves the right to demand repayment of the funds granted to the AIRPORT SPONSOR under this Agreement. Upon such demand, which shall be in writing by the STATE, the AIRPORT SPONSOR agrees that it will reimburse the STATE within thirty (30) days of such demand.

- E.13. Compliance with FAA Regulations. For all Agreements involving the acceptance of federal funds, the AIRPORT SPONSOR agrees to accomplish the project in compliance with the terms and conditions contained herein and incorporated materials referred to in the foregoing Agreement and in Section IV "Assurances" of the FAA document Terms and Conditions of Accepting AIRPORT SPONSOR Improvement Program Grants dated December 15, 2009, as may be amended, and said Section IV "Assurances" is incorporated herein by reference.
- E.14. Pavement Maintenance Program. By executing this agreement, the AIRPORT SPONSOR agrees that it will develop and implement a written pavement maintenance-management plan within one (1) year of the commencement date of this Agreement. The purpose of the pavement maintenance-management plan will be to maximize the useful life-cycle of the airport's paved surfaces. The plan shall apply to all paved surfaces on the airport that have been constructed, reconstructed, or repaired with state or federal financial assistance. A copy of the plan shall be forwarded to the Alabama Department of Transportation Aeronautics Bureau for its review and approval.
- E.15. Compliance with Competitive Bid Laws. The AIRPORT SPONSOR agrees that all construction and improvements undertaken and paid for in part by state funds made available under this AGREEMENT shall be by contract and obtained in compliance with all the applicable competitive bid laws of the State of Alabama. The Airport Sponsor is responsible for the performance, inspection, and acceptance of work and any claims or damages arising under the work performed hereunder.
- E.16. Compliance with Alabama Immigration Law. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons thereunto duly authorized, and the AGREEMENT is deemed to be dated and to be effective on the date started hereinafter as the date of approval by the Governor of Alabama.

ATTEST:



(Signature)

Victoria Southern

MMC/City Clerk

(Typed Name)

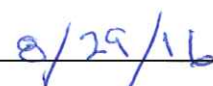
AUTHORIZED AIRPORT REPRESENTATIVE

BY: 

(Signature)

John Koniar Koniar

Mayor of Foley


(Date)

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT:

Jim R. Ippolito, Jr., Chief Counsel
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

John C. Eagerton IV, D.P.A.
Chief, Aeronautics Bureau

Lamar S. Woodham, Jr.
Deputy Director, Administration

STATE OF ALABAMA
acting by and through its
Department of Transportation

John R. Cooper
Transportation Director

(Date)

Robert Bentley
GOVERNOR, STATE OF ALABAMA

State of Alabama
County of Baldwin

CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by ACT 2012-491)

DATE: 8/29/16

RE Contract/Grant/Incentive (describe by number or subject):

Project No: 3-01-0031-014-2016 by and between
City of Foley Alabama (Contractor/Grantee) and
The State of Alabama Department of Transportation (State Agency, Department or Public Entity)

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of Mayor with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by ACT 2012-491) which is described herein as "the Act."
2. Using the following definitions from Section 3 of the Act, select and initial either (a) or (b), below, to describe the Contractor/Grantee's business structure.

BUSINESS ENTITY. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.

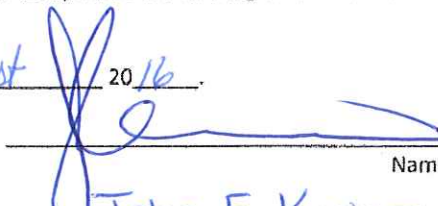
a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, and foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.

b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

EMPLOYER. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

- 3 (a) The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.
- 3 (b) The Contractor/Grantee is not a business entity or employer as those terms are defined in Section 3 of the Act.
3. As of the date of this Certificate, the Contractor/Grantee does not knowingly employ an unauthorized alien within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama;
4. The Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this 29th day of August, 2016.


Name of Contractor/Grantee/Recipient
By: John E. Koniar
Its Mayor

The above Certification was signed in my presence by the person whose name appears above, on this 29th day of August, 2016.

WITNESS:

Victoria Southern
Victoria Southern

Printed Name of Witness