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2015
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; 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 7/27/2015 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 system, Phase I (hangar access area)
Project No: 3-01-0031-013-2015

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

<u>Source of Funds</u>	<u>Amount of Funds</u>
Federal Aviation Administration	\$ 160,705.00
State Airport Development Fund.....	\$ 8,928.00
State Surplus Military Field Fund.....	\$ 0.00
AIRPORT SPONSOR	\$ 8,928.00
Total Project Cost.....	\$ 178,561.00

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 Eight Thousand Nine Hundred Twenty Eight Dollars and 0/100 [\$ 8,928.00]. 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 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:

Ms. Rachel Keith, Airport Manager
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. For any and all disputes arising under this agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlements of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate; private mediators.
- 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 both their individual and 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.
- 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:

Victoria Southern
(Signature)

Victoria Southern, City Clerk
(Typed Name)

AUTHORIZED AIRPORT REPRESENTATIVE

BY: [Signature]
(Signature) John E. Koniar, Mayor

Rachel Keith
Reley Airport Manager

August 5, 2015
(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: August 5, 2015

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

Grant for Project No. 3-01-0031-013-2015 by and between
The City of Foley (Contractor/Grantee) and
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.

- ☒ (a) The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.
- ☐ (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 5th day of August 2015.

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 5th day of August 2015.

WITNESS:

Victoria Southern

VICTORIA SOUTHERN

Printed Name of Witness



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THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS USING A E-VERIFY EMPLOYER AGENT

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS), City of Foley (Employer), and Employment Screening Services (E-Verify Employer Agent) regarding the Employer's and E-Verify Employer Agent's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), the Employer, and the E-Verify Employer Agent. References to the Employer include the E-Verify Employer Agent when acting on behalf of the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer (through the E-Verify Employer Agent) with available information that will allow the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide the Employer and E-Verify Employer Agent appropriate assistance with operational problems that may arise during the Employer's participation in E-Verify. SSA agrees to provide the E-Verify Employer Agent with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify



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process.

3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and non-citizens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for employees through E-Verify, DHS agrees to provide the Employer (through the E-Verify Employer Agent) access to selected data from DHS's database to enable the Employer (through the E-Verify Employer Agent) to conduct, to the extent authorized by this MOU:
 - Automated verification checks on employees by electronic means, and
 - Photo verification checks (when available) on employees.
2. DHS agrees to provide to the Employer and E-Verify Employer Agent appropriate assistance with operational problems that may arise during the Employer's participation in E-Verify. DHS agrees to provide the E-Verify Employer Agent names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to make available to the Employer (through the E-Verify Employer Agent), at the E-Verify Web site and on the E-Verify Web browser, instructional materials on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.
4. DHS agrees to provide to the Employer (through the E-Verify Employer Agent) a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to



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provide to the Employer (through the E-Verify Employer Agent) anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the E-Verify Employer Agent a user identification number and password that will be used exclusively by the E-Verify Employer Agent, on behalf of the Employer, to verify information provided by employees with DHS's databases.
6. DHS agrees to safeguard the information provided to DHS by the Employer (through the E-Verify Employer Agent), and to limit access to such information to individuals responsible for the verification of employees' employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.
7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government workdays of the initial inquiry.
8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS (through the E-Verify Employer Agent) in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.
3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual. The Employer will obtain the E-Verify User Manual from the E-Verify Employer Agent.
4. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
 - If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8



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C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 1-888-464-4218.

- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The photocopy must be of sufficient quality to allow for verification of the photo and written information. The employer will use the photocopy to verify the photo and to assist DHS with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.
5. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 4 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 and E-Verify system compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.
6. The Employer agrees to initiate E-Verify verification procedures (through the E-Verify Employer Agent), for new employees within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual, or in the case of Federal contractors with the FAR E-Verify clause, the E-Verify User Manual for Federal Contractors. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make



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inquiries during the period of unavailability. Employers may initiate verification, through the E-Verify Employer Agent, by notating the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer (through the E-Verify Employer Agent) performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available:

7. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify (through its E-Verify Employer Agent) for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer uses the E-Verify system for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.
8. The Employer (through its E-Verify Employer Agent) agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees in private of the finding and providing them written notice of the findings, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.
9. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work, or otherwise mistreating an employee) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a



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photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

10. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, as applicable, by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).
11. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
12. The Employer agrees that it will use the information it receives from SSA or DHS... (through the E-Verify Employer Agent) pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.
13. The Employer acknowledges that the information which it receives through the E-Verify Employer Agent from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.
14. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its



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employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

D. RESPONSIBILITIES OF FEDERAL CONTRACTORS WITH THE FAR E-VERIFY CLAUSE

1. The Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any existing employee assigned to the contract and all new hires, as discussed in the Supplemental Guide for Federal Contractors. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.
 - a. Federal contractors with the FAR E-Verify clause agree to become familiar with and comply with the most recent versions of the E-Verify User Manual for Federal Contractors and the E-Verify Supplemental Guide for Federal Contractors.
 - b. Federal contractors with the FAR E-Verify clause agree to complete a tutorial for Federal contractors with the FAR E-Verify clause.
 - c. Federal contractors with the FAR E-Verify clause not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor with the FAR E-Verify clause in E-Verify within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States, whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor with the FAR E-Verify clause, the Employer must initiate verification of employees assigned to the contract within 90 calendar days from the time of enrollment in the system and then selecting which employees will be verified in E-Verify or within 30 days of an employee's assignment to the contract, whichever date is later.
 - d. Employer that are already enrolled in E-Verify at the time of a contract award but are not enrolled in the system as a Federal contractor with the FAR E-Verify clause: Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. Employers enrolled in E-Verify as other than a Federal contractor with the FAR E-Verify clause, must update E-Verify to indicate that they are a Federal contractor with the FAR E-Verify clause within 30 days after



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assignment to the contract. If the Employer is enrolled in E-Verify for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor with the FAR E-Verify clause in E-Verify must initiate verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

- e. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors with the FAR E-Verify clause that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors with the FAR E-Verify clause may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II, part D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local, tribal governments, and sureties.
- f. Verification of all employees: Upon enrollment, Employers who are Federal contractors with the FAR E-Verify clause may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only new employees and those existing employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.
- g. Form I-9 procedures for existing employees of Federal contractors with the FAR E-Verify clause: Federal contractors with the FAR E-Verify clause (through their E-Verify Employer Agent) may choose to complete new Forms I-9 for all existing employees other than those that are completely exempt from this process. Federal contractors with the FAR E-Verify clause may also update previously completed Forms I-9 to initiate E-Verify verification of existing employees who are not completely exempt as long as that Form I-9 is complete (including the SSN), complies with Article II.C.4, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.4, if the employee's basis



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for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.4, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.4, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.4, subject to any additional or superseding instructions that may be provided on this subject in the Supplemental Guide for Federal Contractors. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor with the FAR E-Verify clause.

2. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

E. RESPONSIBILITIES OF THE E-VERIFY EMPLOYER AGENT

1. The E-Verify Employer Agent agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the E-Verify Employer Agent representatives who will be accessing information under E-Verify.
2. The E-Verify Employer Agent agrees to become familiar with and comply with the E-Verify User Manual and provide a copy of the manual to the Employer so that the Employer can become familiar with and comply with E-Verify policy and procedures.
3. The E-Verify Employer Agent agrees that any E-Verify Employer Agent Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.
 - a. The E-Verify Employer Agent agrees that all E-Verify Employer Agent representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify, including any tutorials for Federal contractors if the Employer is a Federal contractor.
 - b. Failure to complete a refresher tutorial will prevent the E-Verify Employer Agent and Employer from continued use of the program.
4. The E-Verify Employer Agent agrees to obtain the necessary equipment to utilize E-Verify.



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5. The E-Verify Employer Agent agrees to provide the Employer with the notices described in Article II.B.4 above.
6. The E-Verify Employer Agent agrees to initiate E-Verify procedures on behalf of the Employer in accordance with the E-Verify Manual and E-Verify Web-Based Tutorial. The E-Verify Employer Agent will query the automated system using information provided by the Employer and will immediately communicate the response back to the Employer. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the E-Verify Employer Agent's attempting, in good faith, to make inquiries on behalf of the Employer during the period of unavailability. In all cases, the E-Verify Employer Agent will use the SSA verification procedures first, and will use DHS verification procedures only as directed by the SSA verification response.
7. The E-Verify Employer Agent agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.
2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer (through the E-Verify Employer Agent), will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.
3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer (through the E-Verify Employer Agent) within 10 Federal Government work days of the referral unless it determines that more than 10



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days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.
2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.
5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer (or the E-Verify Employer Agent) will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:
 - Scanning and uploading the document, or
 - Sending a photocopy of the document by and express mail account (paid for at employer expense).
7. If the Employer (through the E-Verify Employer Agent) determines that there is a photo



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non-match when comparing the photocopied List B document described in Article II.C.4 with the image generated in E-Verify, the Employer (through the E-Verify Employer Agent) must forward the employee's documentation to DHS using one of the means described in the preceding paragraph, and allow DHS to resolve the case.

ARTICLE IV

SERVICE PROVISIONS

The SSA and DHS will not charge the Employer or the E-Verify Employer Agent for verification services performed under this MOU. DHS is not responsible for providing the equipment needed to make inquiries. A personal computer with Internet access is needed to access the E-Verify System.

ARTICLE V

PARTIES

- A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual, the E-Verify User Manual for Federal Contractors, or the E-Verify Supplemental Guide for Federal Contractors. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials. An Employer that is a Federal contractor with the FAR E-Verify clause may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor with the FAR E-Verify clause must provide written notice to DHS. If an Employer that is a Federal contractor with the FAR E-Verify clause fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to participants that are not Federal contractors with the FAR E-Verify clause, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
- B. Notwithstanding Article V, part A of this MOU, DHS may terminate access to E-Verify if it is deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the E-Verify Employer Agent or the Employer, or a failure on the part of either to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, termination of this MOU by any party for any reason may negatively affect the Employer's performance of its contractual responsibilities.



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- C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the E-Verify Employer Agent, the Employer, or their agents, officers, or employees.
- E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the E-Verify Employer Agent or the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the E-Verify Employer Agent or the Employer.
- F. Participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).
- G. The foregoing constitutes the full agreement on this subject between DHS, the Employer and the E-Verify Employer Agent.

City of Foley (Employer) hereby designates and appoints **Employment Screening Services** (E-Verify Employer Agent), including its officers and employees, as the E-Verify Employer Agent for the purpose of carrying out **City of Foley** (Employer) responsibilities under the MOU between the Employer, the E-Verify Employer Agent, and DHS.



Company ID Number: 100392
Client Company ID Number: 485267

The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer, the E-Verify Employer Agent and DHS respectively.

If you have any questions, contact E-Verify at 1-888-464-4218.

Approved by:

Employer City of Foley

Sandra Pate
Name (Please Type or Print)

HR Director
Title

Sandra Pate
Signature

1-9-2012
Date

E-Verify Employer Agent Employment Screening Services

Rebecca Warren

Name (Please Type or Print)

Title

Electronically Signed

Signature

01/06/2012

Date

Department of Homeland Security – Verification Division

Name (Please Type or Print)

Title

Signature

Date

**Information Required
For the E-Verify E-Verify Employer Agent Program**

Information relating to your Company:



Company ID Number: 100392

Client Company ID Number: 485267

Company Name: City of Foley

Company Facility Address: 407 E. Laurel Avenue

Foley, AL 36535

County or Parish: BALDWIN

Employer Identification

Number: 636001263

North American Industry
Classification Systems

Code: 921

Administrator: Mike Thompson

Number of Employees: 100 to 499

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