

INTERGOVERNMENTAL SERVICE AGREEMENT

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

RECITALS

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

Whereas, County proposes to enter into an agreement with On-Call Consultant, Skipper Consulting, Inc. (hereinafter "Consultant") to develop a Travel Demand Model for South Baldwin County, to include the City of Foley, City of Gulf Shores and City of Orange Beach.

Whereas, County and City now wish to enter into this Agreement to provide for their joint cooperation to fund an estimated cost not to exceed \$40,000.00, to be split equally between Baldwin County, the City of Foley, the City of Gulf Shores and the City of Orange Beach.

Whereas, County proposes to enter into separate like Agreements with the City of Gulf Shores and the City of Orange Beach for joint cooperation funding.

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

1. **Recitals:** The recitals set out above are incorporated into this Agreement, as though the same were set out in full in this paragraph.
2. **Purpose:** The parties acknowledge and agree that the purpose of this Agreement is to develop a travel demand model for South Baldwin County.
3. **Financing and Budgeting:** Each party shall be equally responsible for financing the obligations undertaken by that party hereunder, and shall not be responsible for financing, or in any other manner contributing to the costs or expenses of the obligations undertaken by the other party unless expressly identified herein.
4. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
5. **Term:** The term of this Agreement shall be either for twelve (12) months from its Effective Date or until such earlier time as the final project invoice is paid in full. This document may be amended only upon written approval by the Parties hereto, and any such amendment shall be approved by the same method by which this original contract has been approved by the Parties.
6. **Services to be Performed by County:**
 - A. Enter into agreement Consultant and issue a Notice to Proceed with development of a travel demand model for South Baldwin County.

- B. Provide Consultant information required to perform travel demand model, including but not limited to, existing plans, reports, studies, project schedules and similar information as requested.
- C. Provide funding in the amount of 25% of the actual cost of the cost of the Travel Demand Model.

7. **Services to be Performed by City:**

- A. Comply with all necessary local, State and Federal rules, regulations and laws applicable to the Project and this Agreement.
- B. Provide Consultant information required to perform travel demand model, including but not limited to, existing plans, reports, studies, project schedules and similar information as requested.
- 8. C. Provide funding in the amount of 25% of the actual cost of the cost of the Travel Demand Model.

9. **Termination and Notice:** Notwithstanding the foregoing, either party may terminate this Agreement, with or without cause, upon written notice to the other party. A party's said notice shall be deemed effective, and the Agreement deemed terminated, thirty (30) days after the date such notice is mailed by certified mail to the other party. In the event of termination by either party, the City shall be responsible for all costs incurred by the County through the date of receipt of the requisite termination notice. All notices provided for herein shall be sent as follows:

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

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

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

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

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

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

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

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

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

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

COUNTY:
BALDWIN COUNTY

_____/_____
J. TUCKER DORSEY / DATE
CHAIRMAN

ATTEST:

_____/_____
DAVID A. Z. BREWER / DATE
COUNTY ADMINISTRATOR

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, _____, a Notary Public in and for said County, in said State, hereby certify that J. TUCKER DORSEY and DAVID A. Z. BREWER, as Chairman and County Administrator of the Baldwin County Commission, respectively, and whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they executed the same voluntarily for and as an act of the Baldwin County Commission.

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

Notary Public

My Commission Expires:_____

CITY:
THE CITY OF FOLEY

_____/_____
Mayor John Koniar /Date

ATTEST:

_____/_____
City Clerk /Date

STATE OF ALABAMA
COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that MAYOR JOHN KONIAR, AS MAYOR OF THE CITY OF FOLEY, ALABAMA, whose name is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same with full authority to do so, as an act of the City of Foley, Alabama.

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

Notary Public

My Commission Expires:_____