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

Whereas, the County and the City acknowledge and agree that the County currently controls County Road 10 aka Keller Road from, inter alia, Alabama Highway 59 East 1 mile +/- to the end of maintenance as depicted on Exhibit "A" which is attached hereto and incorporated herein by reference and which is near the Northeast (NE) Corner of Section 21, Township 8 South, Range 4 East (the "Subject Keller Road Mile"); and

Whereas, portions of the land around the Subject Keller Road Mile are in the corporate limits of the City, and other portions of the land around the Subject Keller Road Mile are not in the corporate limits of the City as shown on Exhibit "A" hereto; and

Whereas, the County and the City acknowledge and agree that the Subject Keller Road Mile is in need of resurfacing (the "Resurfacing Project"); and

Whereas, the County and the City acknowledge and agree that the bridge that crosses over Boggy Branch on the Subject Keller Road Mile is in need of a bridge replacement (the "Bridge Replacement Project"); and

Whereas, the City has requested that the County assist the City in its efforts to fund the Bridge Replacement Project, and the City has requested that the County complete the Resurfacing Project before control of portions of the Subject Keller Road Mile are turned over to the City from the County; and

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

Whereas, subject to the terms of this Agreement, City agrees to pay the County 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, construction costs, and 50% of any Approved Overruns (defined below) associated with the Bridge Replacement Project (it is estimated that 50% of the matching cost will be $82,500.00); and

Whereas, subject to the terms of this Agreement, County agrees to fund 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, construction costs, and 50% of any Approved Overruns associated with the Bridge Replacement Project (it is estimated that 50% of the matching cost will be $82,500.00); and

Whereas, the County will fund 100% of the cost of the Resurfacing Project that is outside the scope of the Bridge Replacement Project; and

Whereas, the County desires to transfer to the City, and the City agrees to accept, control of those portions of the Subject Keller Road Mile at the conclusion of the Resurfacing Project and the Bridge Replacement Project that are then inside the corporate limits of the City ; and

Whereas, the County desires to transfer to the City, and the City agrees to accept, control of those remaining portions of the Subject Keller Road Mile after the conclusion of the Resurfacing Project and the Bridge Replacement Project as soon as these remaining areas are annexed into the corporate limits of the City; and

Whereas, County and City now wish to enter into this Agreement to provide for their joint cooperation to fund the matching cost for preliminary engineering, right-of-way acquisition, utility relocation, and construction costs for the Bridge Replacement Project.

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 fund matching costs for the preliminary engineering, right-of-way acquisition, utility relocation, and construction costs for the Bridge Replacement Project and to provide for the maintenance of the project.

3. **Maintenance Responsibility, Control and Ownership:** The County and the City, at all times, including during the effective term of this Agreement and thereafter, shall retain exclusive responsibility for and control over their respective portions of road maintenance responsibility for County Road 10 (Keller Road). The County obtains no rights, responsibilities or control for the City Portion of Keller Road as a result of the duties and/or obligations contained anywhere herein either during or following the effective term of this Agreement. Except as set forth herein and in accordance with applicable state law, the City obtains no rights, responsibilities or control for the County Portion of Keller Road as a result of the duties and/or obligations contained anywhere herein either during or following the effective term of this Agreement; provided, that when the County Portions of Keller Road are annexed into the corporate limits of the City, the City shall take over road and maintenance responsibility for those portions of the County Portion of Keller Road.

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

5. **Financing and Budgeting:** Each party shall be responsible for financing the obligations undertaken by that party hereunder and shall not be responsible for financing, or in any other manner contributing to, the actual costs or expenses of the obligations undertaken by the other party unless expressly identified herein.

6. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").

7. **Term:** The term of this Agreement shall be for thirty-six (36) months from its effective date. This document may be amended only upon written approval by the Parties hereto, and any such amendment shall be approved by the same method by which this original Agreement has been approved by the Parties.

8. **Reimbursements:** The City will reimburse the County for the amounts listed in this agreement for the Bridge Replacement Project as various phases of the construction of this project are completed. As used in this Agreement, "Approved Overruns" shall mean any reasonable and necessary cost overruns, extra costs, or extra expenses that exceed the estimated costs or the previous contract costs which are required and approved by the Alabama Department of Transportation as a part to the Bridge Replacement Project and shared by the City and the County pursuant to this Agreement.

9. **Services to be Performed by County (the Project):**

   A. Comply with all necessary local, State and Federal rules, regulations and laws applicable to this Agreement and the ATRIP grant.

   B. Acquire all right-of-way necessary to complete the Bridge Replacement Project and the Resurfacing Project.

   C. Construct the improvements for the Bridge Replacement Project in accordance with the ATRIP grant.

   D. Fund 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, construction costs, and 50% of any Approved Overruns associated with these projects cost (it is estimated that 50% of the matching cost will be $82,500.00) for the Bridge Replacement Project.

   E. Construct and resurface the Subject Keller Road Mile pursuant to resurfacing plans that have been reviewed and approved by the City at the County's sole cost and expense.

   F. Upon completion of various phases of the Bridge Replacement Project, the County will bill the City 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, construction costs, and 50% of any Approved Overruns associated with these projects cost (it is estimated that 50% of the matching cost will be $82,500.00) for the Bridge Replacement Project.

   G. Transfer all maintenance responsibilities for the Subject Keller Road Mile to the City of Foley as and when annexed by the City of Foley.

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

   A. Fund 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, construction costs, and 50% of any Approved Overruns associated with these projects cost (it is estimated that 50% of the matching cost will be $82,500.00) for the Bridge Replacement project.

   B. Remit payment within 45 days of receipt of invoices from the County.

C. Accept maintenance and control of the Subject Keller Road Mile in accordance with applicable state law.

D. The City agrees to accept maintenance of those parts of the County Portion of Keller Road upon substantial completion of the County Road 10 aka (Keller Rd) Bridge Replacement ATRIP project that are then in the corporate limits of the City as depicted on Exhibit A.

E. The City agrees to and shall accept maintenance of those parts of the Subject Keller Road Mile as they are annexed into the corporate limits of the City in the future.

Upon acceptance of maintenance of those parts of the Subject Keller Road Mile by the City pursuant to this Agreement or in accordance with applicable state law, the County shall have no further responsibility or liability for the maintenance of those portions of said road.

11. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement, with or without cause, upon written notice to the City. The County's 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 City. In the event of termination by the County, the City shall be responsible for 50% of all actual matching costs incurred by the County for the Bridge Replacement Project through the date of receipt of the requisite termination notice. In the event of such termination prior to the completion of the Bridge Replacement Project and the Resurfacing Project, then the City shall not be obligated to assume or take over control of any portion of the Subject Keller Road Mile.

12. 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

13. **Indemnity:** To the fullest extent allowed by law, City shall indemnify, defend and hold the County and its Commissioners, departments, department heads, affiliates, employees, agents, and representatives (collectively referred to in this section as "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon the County, as a result of or in any manner related to the work or services performed by the City pursuant to this Agreement. This indemnification and hold harmless provision shall survive the expiration or termination of this Agreement.

14. **Conditions:** If the construction of the Project is approved and accepted by ALDOT, it is understood that the City will accept the improvements, 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 representations or warranties to City as to, and has no obligation for, the condition of the improvements, work, property, product, and services of the County. City will be assuming the risk of any latent or patent defects or problems that are or may be contained in the improvements, work, property, product, and services of the County or City. City will be agreeing 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 will be waiving and releasing 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, and services of the County, City or otherwise.

All duties, representations, or 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 by the City against the same.

If the County's contractor provides a warranty for materials, labor, or otherwise, then the County will, if allowed by and in accordance with the underlying contract with the contractor and the ATRIP project requirements, assign the Contractor's warranty to the City as to the portions of Keller Road that the City becomes responsible for maintenance and repair.

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

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **ATRIP Grant Agreement:** The ATRIP project grant agreement calls for the applicant, the County, to agree to maintain the improvements following the completion of the project. This Intergovernmental Service Agreement sets forth the agreements and obligations of the County and City regarding the present and future maintenance of the ATRIP project. Notwithstanding anything contained in the ATRIP project grant application or agreement, the City and County agree that the City's and the County's relative rights, responsibilities and duties concerning the future maintenance, repair and responsibility County Road 10 aka (Keller Road) Bridge Replacement ATRIP Project, are as stated in this Intergovernmental Service Agreement which shall continue in full force and effect. Neither the City's nor the County's relative rights or responsibilities concerning present and future maintenance of subject ATRIP project are or will be changed or modified by the ATRIP grant agreement to be executed between the County and the State.

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

COUNTY:
BALDWIN COUNTY

ATTEST:

BY: _____ / 7/26/2016 _____ / 7/26/2016
Tucker Dorsey /Date Ron Cink / Date
Chairman County Administrator

CITY:
THE CITY OF FOLEY

ATTEST:

BY: _____ / 7/18/16 _____ / 7-18-2016
John Koniar /Date Vickey Southern /Date
Mayor City Clerk

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Tucker Dorsey, whose name as Chairman of the Baldwin County Commission, and Ron Cink, whose name as County Administrator of the Baldwin County Commission, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal, this the 26th day of July, 2016.

Monica E. Taylor
Notary Public
My Commission Expires: My Commission Expires 09/05/2016

State of Alabama)
County of Baldwin)

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

Given under my hand and official seal, this the 18 day of July, 2016.

Kathryn Taylor
Notary Public
My Commission Expires:

KATHRYN TAYLOR
Notary Public - State of Alabama
My Commission Expires
June 24, 2017

COUNTY ROAD 10 KELLER ROAD (EXHIBIT "A")