

## BALDWIN COUNTY COMMISSION AGENDA ACTION FORM

|   |                                     |
|---|-------------------------------------|
| <b>Meeting Type:</b>                    | Baldwin County Commission – Regular |
| <b>Meeting Date:</b>                    | 11/15/2016                          |
| <b>Placement of Item on the Agenda:</b> | CONSENT AGENDA: - HIGHWAY           |
| <b>Item Status:</b>                     | New                                 |
| <b>Submitted By:</b>                    | John Sedlack                        |
| <b>From:</b>                            | Cal Markert, P.E., County Engineer  |

### ITEM TITLE

Project No. ACBRZ61160-ATRP(005) - BCP 0206113 - Keller Road Bridge Replacement, an Alabama Transportation Rehabilitation and Improvement Program (ATRIP) Project - Bid Award Concurrence and Warrant Payable

### STAFF RECOMMENDATION

Take the following actions:

- 1) Authorize the Chairman to send a letter to the Alabama Department of Transportation (ALDOT) in concurrence with awarding the contract for the Keller Road Bridge Replacement ATRIP Project to Gulf Equipment Corporation; and
- 2) Authorize the Clerk/Treasurer to process an interim check issued to ALDOT for County funds due not to exceed \$125,000.00; and
- 3) Invoice the City of Foley for their portion of matching funds to date.

### BACKGROUND INFORMATION

|   |   |
|---|---|
| <b>Previous Commission Action/Background Information:</b> | Yes   |
| <b>Date(s) of Previous Commission Action:</b>             | November 1, 2016<br>June 21, 2016<br>April 16, 2013 |

**Background:**

ALDOT had a bid opening on November 4, 2016 for the Keller Road Bridge Replacement Project. The request for a letter of concurrence and invoice for County funds due is forthcoming from ALDOT. This item was discussed during the November 8, 2016 Work Session.

**November 1, 2016:**

The Commission approved Resolution # 2017-023 and the Revised Construction Funding agreement for the Keller Road Bridge Replacement Project. Funding is subject to availability of Federal Aid Funds at the time of authorization. *(Agreement shall be effective on the date of the approval of the Governor of Alabama and may be terminated by either party upon the delivery of a thirty (30) day notice of termination.)*

**June 21, 2016:**

The Commission approved an Intergovernmental Service Agreement between the City of Foley and Baldwin County for ATRIP Project No. 02-061-13 - Bridge Replacement on Keller Road over Boggy Branch in Foley, Alabama. This agreement shall become effective upon the date of full execution by both parties and terminate thirty-six (36) months later.

**April 16, 2013:**

The Commission approved submitting the following projects for ATRIP Phase 3 funding:

- 1) Higbee Road - Grade, Drain, Base and Pave
- 2) Roundabout at County Road 13 and County Road 48 Intersection
- 3) Roundabout at County Road 13 and County Road 30 Intersection
- 4) Truck Trail 17 Bridge Replacement at Roans Creek
- 5) Truck Trail 17 Bridge Replacement at Styx River
- 6) Keller Road Bridge Replacement
- 7) County Road 34 Bridge Replacement at Negro Creek

**FINANCIAL IMPACT**

|   |                                |
|---|--------------------------------|
| <b>Does the recommendation have a financial impact?</b>   | Yes                            |
| <b>Total cost of recommendation?</b>  | TBD not to exceed \$125,000.00 |
| <b>Are there funds budgeted for this recommendation?</b>  | Yes                            |
| <b>Budget line item(s) to be used:</b>  | 0206113.5150                   |
| <b>Balance remaining in the line item after recommended expenditure:</b>  | N/A                            |
| <b>Does the recommendation create a need for continued funding which is not included in the current budget?</b> | No                             |
| <b>How will this funding requirement be met in the future?</b>  | N/A                            |

**LEGAL IMPACT**

|  |    |
|--|----|
| <b>Are there any legal documents required to be executed if this recommendation is approved?</b> | No |
|--|----|

| ADVERTISING REQUIREMENTS  |   |
|---|---|
| Is advertising required for this recommendation?  | No  |
| CONSISTENCY WITH B.C. STRATEGIC PLAN - 2006-2016  |   |
| Is the recommendation applicable to the goals set forth in the Strategic Plan?                  | No  |
| What is the justification for approving the recommendation?                                     | N/A   |
| POLICY IMPACT   |   |
| Is the recommendation consistent with Commission Policy?  | No  |
| Reason:   | N/A   |
| PERSONNEL IMPACT  |   |
| Does the recommendation have personnel impact?  | No  |
| IMPLEMENTATION  |   |
| Is implementation for this item time sensitive?   | Yes   |
| Required Action and Time Line for Implementation:   | Bid Award Concurrence and Warrant Payable must be furnished to ALDOT Innovative Program Office in Montgomery by TBD.  |
| Department(s)/Individual(s) responsible for follow up activities and specific actions required: | <p><b><u>Administration Staff:</u></b></p> <ol style="list-style-type: none"> <li>1. Prepare award concurrence letter.</li> <li>2. Have award concurrence letter signed by Chairman and ready for pick up after Commission approval.</li> </ol> <p><b><u>Finance and Accounting:</u></b></p> <ol style="list-style-type: none"> <li>1. Process an interim check and have ready to be picked up by a representative from the Highway Department immediately after Commission approval in order to meet ALDOT deadline for receipt of funding.</li> </ol> <p><b><u>Highway Department:</u></b></p> <ol style="list-style-type: none"> <li>1. Hand deliver award letter and warrant to ALDOT by TBD.</li> </ol> <p><b><u>Highway Accounting/Clerk Treasurer:</u></b></p> <ol style="list-style-type: none"> <li>1. Invoice the City of Foley for their portion of the matching funds to date.</li> </ol> |

| <b>ATTACHMENTS</b>  |                                     |
|---|-------------------------------------|
| 1. Invoice (Forthcoming).pdf<br>2. ALDOT - Concurrence of Award Letter - ATRIP .doc<br>3. Revised Construction Agreement (Redacted) (Approved 11-1-2016).pdf<br>4. Resolution No. 2017-023.pdf<br>5. Intergovernmental Service Agreement (Approved 7-21-2016).pdf |                                     |
| <b>APPROVALS</b>  |                                     |
| <b>Budget</b>   | Christie Davis 11/8/2016 3:40:49 PM |
| <b>Personnel</b>  |                                     |
| <b>Administration</b>   | Keri Green 11/9/2016 3:30:50 PM     |
| <b>Chairman and County Administrator</b>  | Chris Elliott 11/10/2016 8:44:15 AM |

Invoice

(Forthcoming)

November 15, 2016

Mr. Steven E. Walker, P.E.  
State Innovative Programs Engineer  
Alabama Department of Transportation  
Administration Building  
1409 Coliseum Blvd. Room 110  
Montgomery, AL 36110-2060

Dear Sir:

**Re: ACBRZ61160-ATRP(005), BCP 02-061-13  
Bridge Replacement and approaches on Keller Road  
Over Boggy Branch  
Baldwin County**

This is to advise that the Baldwin County Commission concurs in the award of the contract to Gulf Equipment Corporation, Theodore, AL, for the construction of the subject project.

Also, attached is the County's check in the amount of \$ **TBD** for the County's participation in this project.

If you have any questions, please contact Cal Markert, County Engineer, at (251) 937-0371.

Sincerely,

T. Christopher Elliott, Chairman  
Baldwin County Commission

cc: Cal Markert, P.E.

**AGREEMENT  
FOR  
ALABAMA TRANSPORTATION REHABILITATION AND IMPROVEMENT PROGRAM  
(ATRIP) PROJECT  
BETWEEN THE STATE OF ALABAMA  
AND  
BALDWIN COUNTY, ALABAMA**

This 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 Baldwin County [REDACTED], hereinafter referred to as the COUNTY; in cooperation with the United States Department of Transportation, the Federal Highway Administration, hereinafter referred to as the FHWA:

**WITNESSETH**

WHEREAS, the STATE and the COUNTY desire to cooperate in the construction of a 1@40' span precast bridge replacement and approaches on CR-10 (Keller Road) over Boggy Branch. BIN# 003658. Length – 0.769 miles  
Project# ACBRZ61160-ATRP(005); BCP# 02-061-13; ATRIP# 02-05-45

**NOW THEREFORE**, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The COUNTY will acquire any additional right-of-way, if needed, for the PROJECT at no cost to the STATE or this PROJECT.
- (2) The COUNTY or its representative, if applicable to the PROJECT, agree to adjust and/or relocate all utilities on the PROJECT without cost to the STATE or this PROJECT.
- (3) The COUNTY or its representative, will provide the required surveys, complete the plans and perform all other preliminary engineering duties for the PROJECT at no cost to the STATE or this PROJECT. The COUNTY will be responsible for submitting all required environmental documents to the STATE and obtaining approval prior to right-of-way acquisition or submittal of final plan assembly to the STATE. The plans will be subject to the approval of the STATE and the PROJECT will be constructed in accordance with the plans approved by the STATE and the terms of this agreement.
- (4) If necessary, the COUNTY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR)(Code Chapter 335-6-12) for the PROJECT. The COUNTY and the contractor will be responsible for compliance with the permit and the STATE will have no obligation regarding the permit. The COUNTY will furnish the STATE (Region) a copy of the permit prior to any work being performed by the contractor.

- (5) The COUNTY will furnish all construction engineering for the PROJECT with COUNTY forces or with a consultant selected and approved by the STATE as part of the PROJECT cost. The cost of construction engineering and inspection shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (6) The STATE will furnish the necessary inspection and testing of materials with STATE forces when needed as part of the PROJECT cost. The cost of inspection and testing of materials shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (7) The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction (latest edition) on the PROJECT and will ensure that alignment and grades on this PROJECT meet the standards of the Alabama Department of Transportation and that the PROJECT will be constructed in accordance with the approved plans.
- (8) The PROJECT will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of eighty (80) percent Federal ATRIP funds and twenty (20) percent COUNTY funds, unless otherwise noted below. Any Federal aid non-participating costs shall be borne by the COUNTY at one hundred (100) percent.
- (9) Funding for this agreement is subject to the availability of Federal ATRIP funds at the time of authorization. The STATE will not be liable for Federal ATRIP funds in any amount. It is understood that the amounts stated below are estimates only. Any shortfall in funding or overrun in construction costs shall be borne by the COUNTY from Federal ATRIP funds, if available, from COUNTY Federal funds, if available, and from COUNTY funds. In the event of an under-run in construction costs, the amount of Federal ATRIP funds will be the amount stated below, or eighty (80) percent of eligible costs, whichever is less.
- (10) The estimated cost of construction of this PROJECT will be provided from the funds outlined as follows:

|                         |                     |
|-------------------------|---------------------|
| Federal ATRIP Funds     | \$ 307,233.00       |
| County Funds            | \$ <u>76,808.00</u> |
| Total (Including E & I) | \$ 384,041.00       |

- (11) The STATE will be responsible for advertisement and receipt of bids, and the award of the contract. Following the receipt of bids and prior to the award of the contract, the STATE will invoice the COUNTY for its prorata share of the estimated cost (if applicable) as reflected by the bid of the successful bidder plus E & I, and the COUNTY will pay this amount to the STATE no later than 30 days after the date bids are opened. Payment must be received prior to award of the contract.
- (12) A final audit will be made of all PROJECT records after completion of the PROJECT and a copy will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this agreement.

- (13) The COUNTY will submit reimbursement invoices for the work performed under the terms of this agreement to the STATE within six (6) months after the completion and acceptance of the PROJECT. Any invoices submitted after this six (6) month period will not be eligible for payment.
- (14) Upon completion and acceptance of the work by the STATE, the COUNTY will assume full responsibility for maintenance of that part of the improvements which are not a part of the Alabama Highway Maintenance System. Upon completion and acceptance of the work by the STATE, the COUNTY will maintain the PROJECT in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.
- (15) The COUNTY shall be responsible at all times for all of the work performed under this agreement and, as provided in Alabama Code § 11-93-2 (1975), the COUNTY shall protect, defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officials, officers, and employees, and their agents and/or assigns.
- (16) For all claims not subject to Alabama Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, and their agents and/or assigns from and against any and all actions, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its agents, servants, representatives, employees or assigns.
- (17) By entering into this agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents, or assigns. The COUNTY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- (18) Each party will provide, without cost to the other, information available from its records that will facilitate the performance of the work.
- (19) Nothing will be construed under the terms of this agreement by the STATE or the COUNTY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> law).
- (20) The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability ( in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.
- (21) Exhibits M and N are attached and hereby made a part of this agreement.
- (22) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.

- (23) 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.
- (24) The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (25) This agreement may be terminated by either party upon the delivery of a thirty (30) day notice termination.

IN WITNESS WHEREOF, the parties hereto cause 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 stated hereinafter as the date of the approval of the Governor of Alabama.

**SEAL**

**ATTEST:**

BALDWIN COUNTY, ALABAMA

Ronald J. Cink  
Clerk (Signature)

BY: T. Christopher Elliott  
Chairman (Signature)  
Baldwin County Commission

Ronald J. Cink  
Print Name of Clerk

T. Christopher Elliott  
Print Name of Chairman

**RECOMMENDED:**

**STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF  
TRANSPORTATION**

\_\_\_\_\_  
Innovative Programs Engineer  
Steven E. Walker, P.E.

\_\_\_\_\_  
Chief Engineer  
Don T. Arkle, P.E.

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

\_\_\_\_\_  
Chief Counsel  
Jim R. Ippolito, Jr.

\_\_\_\_\_  
Transportation Director  
John R. Cooper

**THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON  
THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_\_.**

\_\_\_\_\_  
**GOVERNOR OF ALABAMA  
ROBERT BENTLEY**

Revised 7/18/90

## Exhibit M

### CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of 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, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Revised 06/01/2012  
Revised 10/28/2015

## EXHIBIT N

### **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 of 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.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution

### **TERMINATION DUE TO INSUFFICIENT FUNDS:**

If the Agreement term is to exceed more than one 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.

In the event of proration of the fund from which payment under this Agreement is to be made, Agreement will be subject to termination.

### **NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS:**

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subjected to its provisions.

RESOLUTION NUMBER 2017-023

**BE IT RESOLVED**, by the County Commission of Baldwin County, Alabama, that the County enters into an agreement with the State of Alabama; acting by and through the Alabama Department of Transportation for:

The construction of a 1@40' span precast bridge replacement and approaches on CR-10 (Keller Road) over Boggy Branch. BIN# 003658. Length - 0.769 miles  
Project# ACBRZ61160-ATRP(005); BCP# 02-061-13; ATRIP# 02-05-45

which agreement is before this Commission, and that the agreement be executed in the name of the County, by the Chairman of the Commission for and on its behalf and that it be attested by the County Administrator and the seal of the County affixed thereto.

**BE IT FURTHER RESOLVED**, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept of record by the County Administrator.

Passed, adopted, and approved this 15<sup>th</sup> day of November, 20 16.

ATTESTED:

*Randy G. Gish*  
County Administrator

*T. S. H. Smith*  
Chairman, Baldwin County Commission

I, the undersigned qualified and acting clerk of Baldwin County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County Commission of the County named therein, at a regular meeting of such Commission held on the

15<sup>th</sup> day of November, 20 16, and that such resolution is of record in the Record Book of the County

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this

15<sup>th</sup> day of November, 20 16.

*Randy G. Gish*  
County Administrator

SEAL



**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.

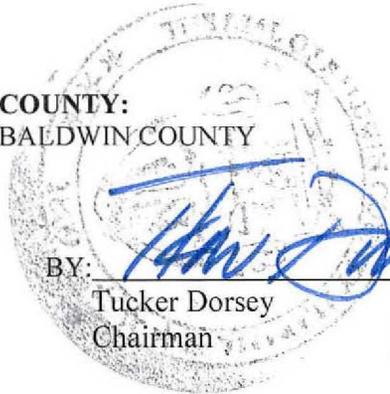
15. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and City and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.
16. **Both Parties 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: Tucker Dorsey  
Tucker Dorsey  
Chairman

/Date

Ron Cink  
Ron Cink  
County Administrator

/Date

**CITY:**  
THE CITY OF FOLEY

**ATTEST:**

BY: John Koniar  
John Koniar  
Mayor

/Date

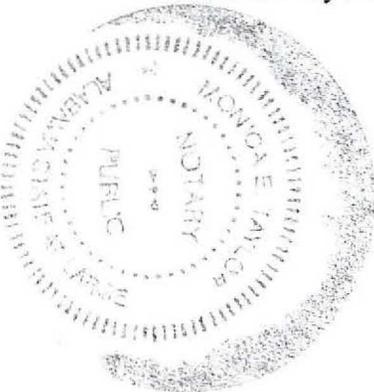
Vickey Southern  
Vickey Southern  
City Clerk

/Date

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 26<sup>th</sup> 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.

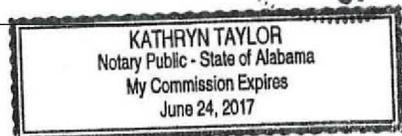
Given under my hand and official seal, this the 18 day of July, 2016.



Kathryn Taylor

Notary Public

My Commission Expires:





# COUNTY ROAD 10 KELLER ROAD (EXHIBIT "A")



11/15/2016 Item BF4