

INTERGOVERNMENTAL SERVICE AGREEMENT

This Intergovernmental Service Agreement ("Agreement") is entered into by and between the Baldwin County Commission (hereinafter "County") and the City of Spanish Fort, 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 City has been approved by the Alabama Department of Transportation for a Transportation Alternatives Program Project (TAP) sidewalk project along Jimmy Faulkner Dr. from Dunlin Avenue to Spanish Fort Middle School; and

Whereas, County and City acknowledge and agree County maintains Jimmy Faulkner Dr. beginning 250 +/- feet north of Tanager Ln and continues north for 2,660 +/- feet; and

Whereas, County and City acknowledge and agree City maintains Jimmy Faulkner Dr. within the project limits except for the portion maintained by the County listed above; and

Whereas, County and City acknowledge and agree that the Jimmy Faulkner Dr., as identified and depicted on *Exhibit A* hereto, are situated inside current County maintained right-of-way, or are inside the present incorporated municipal limits of City which City is responsible for and over which City exercises control; and

Whereas, the City has requested that the County assist the City in its efforts to fund the matching Construction and Construction Engineering & Inspection (CE&I) costs for the sidewalk project only located along Jimmy Faulkner Dr. from Dunlin Avenue to Spanish Fort Middle School; and

Whereas, the County agrees to commit funds in the amount of \$93,682 to the City the Sidewalk project located along Jimmy Faulkner Dr from Dunlin Avenue to Spanish Fort Middle School; and

Whereas, the City shall be responsible for any overruns on the project; and

Whereas, the City shall be responsible for all phases of construction of the project only, and the County shall only be responsible for the funds mentioned above; and

Whereas, County and City now wish to enter into this Agreement to construct a sidewalk on Jimmy Faulkner Dr. from Dunlin Avenue to Spanish Fort Middle School which is inside the County's and City's jurisdictions as described.

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 provide for sidewalk construction on the above listed public right-of-way.
3. **City Remains Owner of Right-of-Way:** The City, at all times, including during the effective term of this Agreement and beyond, shall retain exclusive responsibility for and control over the road portions within the City Limits as specifically identified and depicted on *Exhibit A* hereto. The County shall obtain no rights, responsibilities or control over the road portions as a result of this Agreement or the duties and/or obligations contained anywhere herein either during or following the effective term of this Agreement. Nothing contained herein shall be construed to require or result in the County assuming responsibility for any public streets inside the Spanish Fort City Limits. The County shall remain solely responsible for the portions of the right-of-way maintained by the County as identified and depicted in Exhibit A hereto. However, the City shall be responsible for maintenance of the sidewalk constructed within the County maintained right-of-way identified and depicted on Exhibit A.
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. **Inapplicability to Roads Not Expressly Identified:** The parties acknowledge and agree that this Agreement does not address or affect, and that the parties do not intend by this Agreement to address or affect, the responsibility for or control of any road or road portion not expressly identified and depicted herein.
6. **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 costs or expenses of the obligations undertaken by the other party unless expressly identified herein.
7. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
8. **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.
9. **Services to be Performed by County:**
 - A. Assist the City by providing funding in the amount of \$93,682 for a sidewalk project located along Jimmy Faulkner Dr. from Dunlin Avenue to Spanish Fort Middle School.
 - B. Promptly remit payment within 30 days of the receipt of invoice.
10. **Services to be Performed by City (the Project):**
 - A. Comply with all necessary local, State and Federal rules, regulations and laws applicable to the Project and this Agreement.

- B. Construct the improvements in accordance with the Alabama Department of Transportation construction standards.
- C. Furnish and/or acquire all necessary property rights, including without limitation any necessary access and ownership rights, for access to the right-of-way without cost or liability to the County.
- D. Adjust and/or relocate all utilities for the project without cost to the County, if applicable.
- E. Remit invoice to the County for \$93,682 within 30 days of project completion; and

11. **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. All notices provided for herein shall be sent as follows:

To City: City of Spanish Fort
7361 Spanish Fort Boulevard
Spanish Fort, Alabama 36527

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

12. **Indemnity:** To the fullest extent allowed by law, City shall defend, indemnify and hold County harmless from and against any and all demands, actions and claims of any description whatsoever, for property damage, personal injury (including death), breach of contract, actions in trespass and any and all other claimed losses, injuries or damages of any kind, including, without limitation, attorneys' fees and costs, arising out of, relating to, or resulting from, any and all acts or omissions of the City in relation to the obligations hereunder, including without limitation, the execution and delivery of the Agreement, the City's obligations in Section 10 of this Agreement (including, without limitation, the acquisition of any real property interests related to the Project), and the conception, funding, financing, planning and design of this Project.

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.

13. **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.

14. **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.

15. **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.
16. **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.
17. **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.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

COUNTY:
BALDWIN COUNTY

JAMES E. BALL / DATE
CHAIRMAN

ATTEST:

WAYNE DYESS *Ronald J. Cink* DATE
COUNTY ADMINISTRATOR *Budget Director*

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, _____, a Notary Public in and for said County, in said State, hereby certify that JAMES E. BALL, and *Ronald J. Cink* *Budget Director* ~~WAYNE DYESS~~, whose names as Chairman and County Administrator of the Baldwin County Commission, respectively, 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 with full authority to do so for and as an act of the Baldwin County Commission.

Given under my hand and official seal this the _____ day of _____, 2022.

Notary Public

My Commission Expires: _____

CITY:
THE CITY OF SPANISH FORT

[Signature] *5/2/22*
MAYOR MICHAEL M. McMILLAN /Date

ATTEST:

[Signature] *5/2/2022*
REBECCA A. GAINES /Date
CITY CLERK

STATE OF ALABAMA
COUNTY OF BALDWIN

I, Kimberly K Barr, a Notary Public, in and for said County in said State, hereby certify that MICHAEL M. McMILLAN, and REBECCA A. GAINES, whose names as Mayor and City Clerk of CITY OF SPANISH FORT respectively, 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 this instrument, they executed the same voluntarily with full authority to do so for and as an act of the City of Spanish Fort, Alabama.

Given under my hand and official seal this the 2nd day of May, 2022.



Kimberly K Barr
Notary Public

My Commission Expires: 10-25-2023