

THE "FOLEY-BEACH EXPRESS" AGREEMENT

This Agreement is among the City of Foley, Alabama, a municipal corporation under the laws of the State of Alabama (the "City"), Baldwin County Bridge Company, L.L.C., an Alabama limited liability company ("BCBC"), and Baldwin County, Alabama, a political subdivision of the State of Alabama (the "County").

Recitals

WHEREAS, this Agreement is to facilitate construction of, and coordinate efforts for, a four lane planned access road (a/k/a "controlled access facility") from the intersection of Alabama Highway 59 immediately north of Woerner Road (known as "three mile curve"), north of the City of Foley, to Alabama Highway 180, which will be available to the public as an evacuation route when hurricanes threaten the public safety, and which will relieve the substantial traffic congestion which is already occurring on Highway 59 south of Interstate 10 and especially between the cities of Foley and Gulf Shores. Segments of this new road (formerly referred to as the "Perdido Pass Parkway") will be constructed by different parties but will as a whole be known as the "Foley-Beach Express".

WHEREAS, the County and the City, as well as other governmental entities in the County, have determined this route to be a feasible route to alleviate the growing congestion on Highway 59, the current sole evacuation route directly northward from the Gulf Beaches, and to be in the best interests of the County and the City. The County is also proceeding with a study of the possible development of a northern connector from the Foley-Beach Express to Interstate 10 via "the County Road 83 corridor".

WHEREAS, during the last decade traffic on Highway 59 between the City and Gulf Shores has grown at a rate of 8-10% per year. Traffic congestion on this route has been substantial, with the eight mile excursion between the City and Gulf Shores often taking as much as an hour or longer. During Hurricane Opal, it took approximately three hours to get from the Highway 59 Bridge in Gulf Shores to Interstate 10. Continuation of these growth rates on Highway 59, which is expected, may result in the doubling of the current traffic rates within the next 7-9 years unless an additional route is developed.

WHEREAS, the location and construction of the Foley-Beach Express is very important to the continued growth and viability of the City.

WHEREAS, the City has entered into Contract Number ACHPP/HPP-0200(14) (the "City Contract") for construction of seven and one-half miles of the "Foley-Beach Express" from the intersection of Highway 59 immediately north of Woerner Road southward to Baldwin County Road 20, (herein referred to as the "Foley Road").

WHEREAS, recent traffic studies reveal that at present approximately one million cars accessing the Alabama Gulf Beaches per year are choosing a route through Pensacola, Florida, thereby bypassing Baldwin County, Alabama. If the current problem of congestion on Highway 59 could be solved by construction of the Foley-Beach Express, the County, the City and other municipalities in the County desire that in the future much of the traffic coming south on Interstate 65, which is currently bypassing Baldwin County due to the congestion, would make use of Highway 59 and the Foley-Beach Express to the Alabama beaches.

WHEREAS, neither the State of Alabama nor the County itself is prepared to pursue construction of a bridge project across the intracoastal waterway in the foreseeable future.

WHEREAS, BCBC is pursuing the construction both of a toll bridge across the intracoastal waterway (on the western side of the City of Orange Beach), related approach

roads and toll facilities, and a public road of five and one-half miles leading northward from the toll plaza to Baldwin County Road 20 (the southern terminus of the Foley Road) (the "BCBC Project").

WHEREAS, BCBC is owned by limited liability partnerships the interest in which are held by the families of Timothy E. James, John McInnis, Tim McInnis, Elizabeth C. James, and Patrick James.

WHEREAS, the City and the County, by entering into this Agreement, do not intend to lend their credit or grant any public money or thing of value in aid of BCBC or any other individual, association, or corporation, and all obligations and duties imposed upon the City and the County by this Agreement, are for and in the best interests of the City and the County and any benefit, money or other aid that enures to the benefit of BCBC or any other individual, association, or corporation is intended to be in exchange for good and valuable consideration.

WHEREAS, the County has issued a license to BCBC for construction of the Bridge pursuant to Code of Alabama sections 23-1-81 and 37-4-1. BCBC has expended substantial efforts to obtain other governmental approvals or permits for construction of the Bridge, including acquisition of a section 404 permit from the U.S. Army Corps of Engineers and a navigational permit from the U.S. Coast Guard. BCBC has secured the right to purchase the property on which the Bridge will be located. BCBC has verified the feasibility of the Bridge through traffic studies done by U. R. S. Greiner, Engineers (New York), the firm which also did the feasibility studies for the Midbay Bridge at Destin, Florida, and the Santa Rosa Bridge across Pensacola Bay.

WHEREAS, various landowners along the proposed Foley-Beach Express route, both in the County and the City, have donated or plan to donate or otherwise convey title or

easements to the real property underlying the proposed route to the City and to BCBC.

WHEREAS, the County, the City and BCBC have determined that a common "Access Management Plan" in substantially the form attached hereto as Exhibit "F" is desirable to ensure the continued "expressibility" of the Foley-Beach Express and thus its long-term efficacy as a non-congested way to the Alabama beaches and as an effective evacuation route during hurricanes. The parties have also determined that their combined efforts will continue to be necessary to most efficiently develop the Foley-Beach Express.

WHEREAS, entering into this Agreement does not contemplate an expenditure of public funds by the City or by the County to BCBC.

WHEREAS, the City received a seven million dollar (\$7,000,000) grant from the federal government for the construction of the Foley Road and has arranged sufficient financing to construct the Foley Road in anticipation of its receipt of the grant proceeds.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND PERFORMANCES HEREIN, AND FOR GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY ALL PARTIES, IT IS AGREED AS FOLLOWS:

1. BCBC hereby represents, warrants and agrees as follows:

(a) That the execution and delivery of this Agreement by the undersigned agent of BCBC have been duly authorized by the governing board of BCBC.

(b) That BCBC has full power, right and authority to enter into and perform this Agreement.

(c) (i) BCBC agrees to construct (or procure through a licensed contractor the construction of) the Bridge and the road south of the toll plaza to State Road 180 as depicted in the project drawing attached as Exhibit "B" hereto, and the four lane road north of the toll plaza of approximately five and one-half miles to the southern terminus of the Foley Road immediately North of Baldwin County Road 20 depicted in the project drawing attached as Exhibit "C" hereto, in accordance with the terms of this Agreement and the requirements of all governmental entities or agencies having jurisdiction over such construction, unless such construction is reasonably found by BCBC to be financially or physically impracticable due to (a) unforeseen conditions at the bridge site which are discovered through testing after the date of this Agreement, or (b) unforeseen environmental, regulatory, or other uncontrollable circumstances, in either case which are outside the scope of work under the construction contract. The northern terminus of the aforesaid construction by BCBC shall extend to and include the engineering and construction of the intersection of the Foley Road and Baldwin County Road 20, including specifically the installation of all required turning lanes and other intersection related construction improvements or components on the north side of the intersection of the Foley Road and Baldwin County Road 20 to the extent shown on Exhibit "K" hereto, and BCBC shall cause its engineers and contractors to cooperate with the City and its contractors and engineers to coordinate in connecting the BCBC Project and the Foley Road.

(ii) In the event that the total amount of all construction costs for the Foley Road (including any change orders approved by the City's Project Engineer, but excluding costs of land, design, engineering, wetland mitigation or other non-construction costs) as certified by the City's Project Engineer, exceed the sum of seven million dollars (\$7,000,000), BCBC shall obtain through its own financing and pay to the City, upon depletion of the aforesaid \$7,000,000, the amount in excess of \$7,000,000 owed or paid to the contractor(s) for such certified construction costs determined without reduction for any monies owed by the contractor to the City (e.g., liquidated damages), provided, however, that BCBC shall not be obligated under this provision to pay the City more than the sum of one million dollars (\$1,000,000). Within five (5) days after BCBC receives the proceeds of the BCBC Notes, as hereinafter defined, BCBC, the City and SouthTrust Bank (the "Escrow Agent") shall enter into an escrow agreement in substantially the form attached hereto as Exhibit "D" (the "Escrow Agreement") and BCBC shall deliver to the Escrow Agent, in currently available funds, one million dollars (\$1,000,000). The Escrow Agent shall hold and disburse such money under the terms of the Escrow Agreement.

(iii) BCBC shall dedicate the road constructed from the toll plaza northward to County Road 20, depicted in the project drawing attached as Exhibit "C" hereto, to the County (or, if directed by the County as to a portion of the road, to the City) upon final completion of the road, subject only to the right of BCBC to carry out any work necessary for such completion and to perform its obligations and exercise its rights under this Agreement. Upon dedication of said road and acceptance by the County (and/or the City), the County (and/or the City if a portion of the road is dedicated to the City) shall

have the non-exclusive right to enforce the obligations of the builder of said road to remedy defects in construction during the correction period (which period shall last one (1) year after final completion), and BCBC shall make such assignments as may be necessary to allow the County (and/or City, as applicable) to enforce such obligations; provided, however, BCBC shall at all times retain the right to enforce any such obligations as it may determine in its discretion. Until the County (and/or the City) accepts maintenance of such road, BCBC shall cause the same to be maintained in accordance with sound engineering and maintenance practices (including without limitation timely resurfacing in accordance with ALDOT standards, maintenance of shoulders, ditches, unimproved areas within rights-of-way, and other maintenance items as necessary). BCBC has submitted to the County, and the County has administratively approved, engineering plans and specifications for the road north of the toll plaza. BCBC shall construct its road in accordance with the aforementioned plans and specifications and shall cure any defects in the construction of such road brought to its attention by the County within one (1) year of the final completion of such road.

(d) On or before substantial completion of construction of its road project depicted in Exhibit "C", BCBC will pay to the County, upon receipt of notice from the County of the required amount, a sum sufficient (but in no event to exceed \$100,000) to purchase the asphalt plant mix needed for an approximately three (3) mile section of Roscoe Road beginning at County Road 4 and extending northward, which runs close to the express route, and which the County wishes to improve. The City may, on or before August 31, 2000, but not before June 30, 2000, give notice to BCBC to designate fifteen (15) acres of land from the larger tract of land depicted on Exhibit "E" hereto. After such notice,

BCBC shall have thirty (30) days in which to designate the land which it will deed to the City. After BCBC designates the fifteen (15) acre parcel to be deeded to the City, the City shall have thirty (30) days in which to elect whether it wants to take title to the land. In the event the City elects to take title to the land, BCBC shall have thirty (30) days after notice of the City's election to transfer and convey such parcel to the City by a warranty deed (or, if acceptable to the City's title insurer, a statutory warranty deed), free and clear of any liens, encumbrances, and any claims or rights of others which would impair its use for the intended purpose, to be used for wetland mitigation purposes in the construction of the Foley Road. At any time prior to the City's election to take title to the land designated by BCBC, BCBC may, at its own expense, excavate the borrow to the extent needed for its road construction work and deposit so much muck as it may have available, provided that it shall not deposit more muck than the volume of borrow removed. In the event the City elects not to take title to the designated parcel of land within the specified 30-day period, or if the City fails to give notice to BCBC to designate the fifteen (15) acres on or before June 30, 2000, BCBC's obligations under this paragraph 1(d) to the City will be deemed satisfied.

(e) BCBC has obtained restrictive agreements covering certain portions of the property adjacent to the BCBC Project, which agreements (the "BCBC Restrictions") pertain to limitations on access to the BCBC Project consistent with the access contemplated in the Access Management Plan. Concurrently with its execution of this Agreement, BCBC shall execute the "Mutual Assignment," in the form attached hereto as Exhibit "L," which form is hereby approved. BCBC shall enforce the BCBC Restrictions and shall comply with the Access Management Plan in the operation of those

portions of the BCBC Project that are not accepted for maintenance by the County or the City.

(f) BCBC shall provide, in accordance with sound engineering and maintenance practices, perpetual maintenance for the Bridge, toll plaza and roadway adjacent to the toll plaza southward to State Highway 180, including without limitation, timely resurfacing in accordance with ALDOT standards, maintenance of shoulders, ditches, unimproved areas within rights-of-way, and other maintenance items as necessary.

(g) In the event the County or its assigns constructs a northern connector from the Foley-Beach Express to Interstate 10 via "the County Road 83 corridor", as approximately depicted in Exhibit "G" hereto, but which may include access to I-10 via the existing Wilcox Road (County Road 64) interchange, and a notice to proceed for such construction is issued by the County within three years from the date hereof, BCBC shall pay to the County the sum of five hundred thousand dollars (\$500,000) on or before substantial completion of such connector. The County agrees to provide BCBC with a copy of any such notice to proceed promptly after issuing such notice, and to notify BCBC not later than sixty (60) days prior to anticipated final completion of such connector stating that such payment is due upon such final completion.

(h) Upon vacation and permanent closure of the portion of Brinks Willis Road referred to in Section 2(g) hereof by the County, BCBC shall construct at its own expense an acceleration lane for Brinks Willis Road onto the southbound lane of the Foley-Beach Express, as depicted in Exhibit "H-1" hereto. The County shall notify BCBC promptly

after such vacation and closure is complete.

(i) BCBC will, on or before final completion of the toll bridge and connector road to County Road 20, extend at its own expense Baldwin County Road 4 to tie in to the Foley-Beach Express at a convenient place north of the toll plaza, as depicted in Exhibit "I" hereto.

PROVIDED, that the obligations undertaken by BCBC hereunder are subject to the condition that BCBC shall have closed its anticipated issue of Senior and Subordinated Notes (the "BCBC Notes"). BCBC agrees to use its best efforts to obtain such financing.

2. The County hereby represents, warrants and agrees as follows:

(a) That the execution and delivery of this Agreement by the undersigned agent of the County has been duly authorized by the Baldwin County Commission.

(b) That the County has full power, right and authority to enter into and perform this Agreement.

(c) The County shall quit claim to the City and the City shall accept authority and control over: (i) all developed and undeveloped right of ways that intersect and are within the Foley Road and (ii) all portions of Woerner Road lying East of Highway 59 and West of the eastern right of way of the Foley-Beach Express as it intersects with Woerner Road.

(d) Consistent with its obligations imposed by the Constitution and laws of the State of Alabama, the County has approved and hereby agrees to follow the Access Management Plan in its operation of those portions of the Foley-Beach Express from time to time within its jurisdiction and control.

The County has approved, and shall execute concurrently with its execution of this Agreement, the Mutual Assignment.

(e) The County agrees to operate as a free (non-toll) public road any portions of the Foley-Beach Express which are from time to time within its jurisdiction and control and the County shall accept for maintenance and, to the extent sufficient funding is appropriated by the Baldwin County Commission and is available, in accordance with sound engineering and maintenance practices, provide maintenance (including without limitation timely resurfacing in accordance with ALDOT standards, maintenance of shoulders, ditches, unimproved areas within rights-of-way, and other maintenance items as necessary) for the portion of the BCBC Project north of the toll plaza; provided, however, subject to Section 5 hereof the County reserves the right to delegate this covenant to maintain to the State of Alabama if the State will accept said obligation. Such acceptance by the County shall take place upon final completion of such portion of the BCBC Project. BCBC shall notify the County not less than forty-five (45) days prior to the anticipated date of final completion.

(f) The County shall, to the extent permitted by applicable law, use its power of condemnation and/or eminent domain to acquire any parcels of or interest in real property in the County for which a right of way or other needed property interest (including, without limitation drainage easements, slope easements, and the like) cannot be obtained by the City to its satisfaction and which are considered by the City, in the exercise of its constitutional and legislative powers, to be necessary for the construction of the Foley Beach Express or the northern connection to the Foley-Beach Express which the City may choose to do in the future, or otherwise for the City's participation in the Foley-Beach Express and its Access Management Plan, and to assign permanent rights of way or other property rights to the City or its assigns with respect to such property. The City will reimburse the County for the cost of any such property or property rights required to be condemned or acquired by the County for the City, including without limitation attorneys' fees, expert fees, and other direct costs and expenses.

(g) The County shall use its best legal efforts to vacate and permanently close the Brinks Willis Road between the western right-of-way of the Foley Beach Express and Roscoe Road, as depicted in Exhibit "H-2" hereto.

(h) The County has authorized and approved the Supplement to Resolution 96-48, in substantially the form attached hereto as Exhibit "J".

(i) The County has received and administratively approved the engineering plans and specifications for the BCBC Project north of the toll plaza, as discussed in Section 1(c)(iii), above.

3. The City hereby represents, warrants and agrees as follows:

(a) That the execution and delivery of this Agreement by the undersigned agent of the City has been duly authorized by the City.

(b) That the City has full power, right and authority to enter into and perform this Agreement.

(c) The City shall proceed with construction of the Foley Road, comprising approximately seven and one-half miles and running from the intersection of State Highway 59 and immediately North of Woerner Road south to County Road 20, substantially as shown on Exhibit "A" attached hereto, all in accordance with the City Contract; provided, that the City may at any time elect to decline to proceed with such construction or cease construction efforts in the event such construction is financially or physically impractical due to (a) unforeseen conditions along the proposed route which are discovered after the date of this Agreement, or (b) unforeseen environmental, regulatory or other uncontrollable circumstances (but the unavailability of the \$7,000,000 federal grant expected by the City shall not be such an unforeseen or uncontrollable circumstance), in either case which are outside the scope of work under the City Contract and which do not arise as a result of any change in any applicable laws or regulations that are effected by or on behalf of the City or the County. The City shall notify BCBC of any such election, in which event BCBC or its assignee (including its lenders) may elect to continue with such construction. In such event, or if the City otherwise ceases

construction of the Foley Road, the City agrees to assign its rights and duties under the City Contract to BCBC or its designee to the extent necessary to permit such completion, to the extent such rights and duties are assignable. Upon completion of construction and acceptance of the Foley Road by the City and ALDOT, if applicable, the City shall open the Foley Road for vehicular traffic and shall accept the same for maintenance. The City Contract contains a firm calendar day deadline for completion of the Foley Road not later than 455 days from the date the contractor commences work pursuant to the terms of the City Contract and a provision for liquidated damages of not less than five thousand dollars (\$5,000) per calendar day for late performance by the contractor, all subject to the terms of the City Contract. In the event the City is entitled to liquidated damages under the City Contract, and only to the extent and amount that the City recovers the same, the City will pay to BCBC up to the lesser of (i) \$5,000 per day of liquidated damages recovered by the City or (ii) the amount of money necessary to cover the interest on BCBC's financing for the period of the delay for which the City actually recovers liquidated damages from the contractor; provided that in either event, said payment due from the City to BCBC will be reduced by the City's costs of collection including litigation costs and reasonable attorney's fees. The City will pay BCBC, in accordance with the above provisions, only for those days during the delay period that the BCBC Project was complete and open for public traffic. Subject to the terms of the City Contract, the City agrees to use reasonable efforts to retain or collect liquidated damages properly payable to it. The City and BCBC hereby agree that, subject to the provisions for assignment set forth above, the parties to the City Contract are the only real parties in interest in any dispute concerning liquidated damages or performance under the City Contract, and BCBC is not in privity with the same nor is it a third party beneficiary to the same. The

City expressly reserves the right to take any action it deems necessary or prudent to represent the best interests of the City in regards to the City Contract, including all issues concerning liquidated damages, and BCBC will take no part and have no input in any of the City's actions in this regard, except in the event of assignment by the City to BCBC.

(d) The City shall, to the extent permitted by applicable law, use its powers of condemnation and/or eminent domain to acquire any parcels of or interests in real property in the City (or that will be in the City) for which a right of way or other needed property interest (including without limitation drainage easements, slope easements, and the like) cannot be obtained by the County to its satisfaction and which are considered by the County to be necessary for the construction of the northern connector to the Foley-Beach Express which the County may choose to do in the future, or otherwise for the County's participation in the Foley-Beach Express and its Access Management Plan, and to assign permanent rights of way or other property rights to the County or its assigns with respect to such property. The County will reimburse the City for the cost of any such property or property rights required to be condemned or acquired by the City for the County, including without limitation attorneys' fees, expert fees, and other direct costs and expenses.

(e) The City has obtained deed restrictions on certain of the property adjacent to the Foley Road, which deed restrictions (the "Foley Restrictions") pertain to limitations on access to the Foley Road. The City hereby approves, and shall execute concurrently herewith, the Mutual Assignment. The City further approves, and shall execute

concurrently herewith, a restrictive covenant, in substantially the form attached hereto as Exhibit "M," pertaining to the parcel of property owned by the City adjacent to the Foley Road.

The City shall consider the adoption of an ordinance in substantially the form attached hereto as Exhibit "N" (the "Planned Access Ordinance"). Upon adoption by the City of the Planned Access Ordinance, the City will follow and enforce such ordinance in its operation of those portions of the Foley-Beach Express from time to time within its jurisdiction and control.

(f) The City agrees to operate the Foley Road as a free (non-toll) public road and, to the extent sufficient funding is appropriated by the Foley City Council and is available, the City shall maintain the Foley Road in accordance with sound engineering and maintenance practices (including without limitation timely resurfacing in accordance with ALDOT standards, maintenance of shoulders, ditches, unimproved areas within rights-of-way, and other maintenance items as necessary); provided, however, subject to Section 5 hereof, the City reserves the right to delegate this maintenance covenant to the County or the State of Alabama, if either of such governmental entities will accept said obligation.

(g) If BCBC does not deposit the \$1,000,000 in escrow for the benefit of the City as contemplated in Section 1(c)(ii), or if a court of competent jurisdiction (including specifically a federal bankruptcy court) shall issue a final order not appealable by the City which denies the City the benefit of such escrow, the City shall have the right to

terminate its obligations under this Agreement.

4. Each of the parties does hereby further represent, warrant and agree as follows:

(a) All parties are relying on the covenants and obligations of all other parties to this Agreement.

(b) BCBC or its affiliates and its assigns shall have perpetual right to collect tolls and determine toll fares for the Bridge; provided, however, that all tolls which would otherwise be charged for the use of the Bridge shall be waived by BCBC for such period of time that the Baldwin County Emergency Management Agency, or such other state or federal agencies of similar authority, shall have issued a directive requesting or requiring the voluntary or mandatory evacuation of Pleasure Island and the Alabama Gulf Coast. Any such waiver of tolls with respect to the Bridge shall be limited solely to evacuation of vehicles pursuant to such a directive and vehicles returning to Pleasure Island or the Alabama Gulf Coast will be subject to whatever tolls may then be in force and effect. No tolls will be charged for fire, emergency medical or law enforcement vehicles, or vehicles owned by Baldwin County at any time.

(c) BCBC's obligations to finance, construct, and operate the Bridge under the terms of this Agreement are those of BCBC alone, and not those, either as joint venturers or otherwise, of the City or of the County.

(d) The City and the County will make reasonable efforts and cooperate to: (i) install effective directional signs to the Foley Beach Express from other public roads within their respective jurisdictions; and (ii) install effective directional signs to the Beach within the Foley-Beach Express itself in accordance with the recommendations of qualified traffic engineers retained by the City and/or County. The locations of the initial signs within the Foley-Beach Express will be marked in the final project drawings for the City's seven and one-half mile segment and BCBC's five and one-half mile segment of the project. The City and County will allow placement of "alert boards" (at the expense of commercial establishments desiring the same) along the rights-of-way of the Foley-Beach Express. The foregoing obligations are subject to any applicable laws, regulations, and sound highway signage standards.

(e) The obligations undertaken by the City and the County under this Agreement are subject to the condition that BCBC shall: (i) commence construction of the BCBC Project within six (6) months of the date of this Agreement and (ii) complete construction of the BCBC Project and open the same for public traffic within thirty (30) months of the date of this Agreement. If either of these conditions is not met, either the City or the County (or both) may elect to terminate this Agreement.

(f) The parties agree that the BCBC Restrictions and the Foley Restrictions have previously been obtained, and that the Mutual Assignment with respect to such restrictions is being executed, independent of the other agreements of the parties herein.

5. This Agreement shall be binding upon and inure to the benefit of the parties hereto and

their respective representatives, successors, and assigns. The County and the City or either one of them, may assign rights and duties under this Agreement to the State of Alabama, and upon assumption of all or a portion of the obligations of the County or the City under this Agreement, and if the State shall waive, in a manner which is legally effective, its sovereign immunity with respect to such obligations, the County or the City (as the case maybe) shall be relieved of all further duties and obligations hereunder which are specifically assumed by the State of Alabama. BCBC may assign rights and duties under this Agreement to or on behalf of its noteholders or other creditors. Except as specifically provided herein, no assignment or delegation under this Agreement shall relieve the obligated party of any duty of performance hereunder. All successors in interest under this Agreement shall be bound by all the duties of its predecessors in interest to the extent provided in any such assignment.

6. If any party to this Agreement should default in any of his, her, or its obligations under this Agreement, the parties agree that it would be impracticable to measure the resulting damages; accordingly, the other parties, in addition to any other available rights or remedies, may sue in equity for specific performance, and the parties each expressly waive the defense that a remedy in damages would be an adequate remedy for such default. In no event shall any party be liable for any consequential or indirect loss or damages suffered by any other party (including, as to BCBC, any amounts payable by it under its financing documents) or for any punitive damages. Without in any way limiting the foregoing, in the event either the City or the County is ordered to pay money damages, all parties agree that the maximum, aggregate amount that either the City or the County can be ordered to pay is FIVE HUNDRED THOUSAND DOLLARS (\$500,000) without regard to the number or nature of the claims against it.

7. No party shall be liable for, or considered to be in breach of this Agreement as a result of, delays or failures in performance or default arising out of or resulting from causes beyond its control including, but not limited to, acts of God, of the government of the United States or the State of Alabama, civil disturbance, fire, flood, epidemics, quarantine restrictions or hurricanes or other unusually severe weather. If any party's ability to perform its obligations under this Agreement is affected by any such event, such party shall promptly, upon learning of such event and ascertaining that it will affect its performance hereunder, give notice to the other parties stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect. The relief from performance to which the affected party shall be entitled shall be of no greater scope or of longer duration than the relevant event. The affected party will take all reasonable steps to minimize the delay caused by any such event.

8. This Agreement shall be governed by and enforced in accordance with the laws of the State of Alabama.

9. This Agreement may be executed in multiple counterparts, each one of which shall be deemed an original for all purposes.

10. If any term or provision of this Agreement shall hereafter be held illegal or unenforceable at law, then the remainder of this Agreement not so held shall be severed so as to render it legal and enforceable; and the parties further agree that if necessary, a court of competent jurisdiction may reform this Agreement so as to remove or cure any defect and as closely as possible effect the purposes and intentions of the parties hereto. If the lack of any term or provision of this

Agreement shall hereafter be held to render the same illegal or unenforceable, then the parties agree that a court of competent jurisdiction may reform this Agreement so as to cure any defect, including the addition of a term or provision if necessary, so as to effect as closely as possible the purposes and intentions of the parties hereto.

11. This Agreement and its Exhibits contain the entire agreement between the parties hereto and supersede any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter hereof. There are no oral understandings, statements, promises, or inducements contrary to the terms of this Agreement. This Agreement may be amended, and its provisions may be waived, only by a writing signed by the party against whom enforcement is sought.

12. Each of the City and County, to the full extent permitted by the Constitution and laws of the State of Alabama, irrevocably waives and agrees not to claim any immunity from any suit or proceeding arising under or in connection with this Agreement to which it is now or may hereafter become entitled.

13. Each of the parties agrees that, prior to filing any action against another party hereunder arising out of the performance or nonperformance of this Agreement, it will notify such other party and use reasonable efforts to resolve any conflict, but nothing herein shall prevent any party from taking such actions as it deems necessary and appropriate.

14. Anything contained in this Agreement to the contrary notwithstanding, the agreements, covenants, obligations, duties and liabilities of the City and County contained in this Agreement are limited by and subject to the obligations and limitations imposed upon any county or

municipality in the State of Alabama by the Constitution and/or laws of the State regarding the exercise and/or delegation of its Constitutional and legislative powers.

15. Any notice given hereunder shall be in writing and shall be deemed given when deposited in the United States mail, postage prepaid, or when delivered by hand or by facsimile (with receipt electronically confirmed), at the following locations or at such other location as shall be specified in a notice to the other parties:

Baldwin County Bridge Company, L.L.C.
110 East Commerce Street
Greenville, Alabama 36067
Fax: (334) 382-3334

With a copy to: Greg L. Leatherbury, Jr.
Hand Arendall, L.L.C.
112 West Laurel Avenue
Foley, Alabama 36536
Fax: (334) 970-3375

City of Foley, Alabama
Attention: City Clerk
407 East Laurel Avenue
Foley, Alabama 36535
Fax: (334) 952-4014

With a copy to: Warren C. Herlong, Jr.
Helmsing Sims & Leach, P.C.
150 Government Street
Mobile, Alabama 36602
Fax: (334) 432-0633

Baldwin County, Alabama
Attention: County Clerk
322 Courthouse Square
Bay Minette, Alabama 36507
Fax: (334) 580-2500

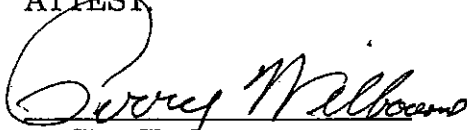
With a copy to: Robert A. Wills
125 D'Olive Street
Bay Minette, Alabama 36507
Fax: (334) 937-1212

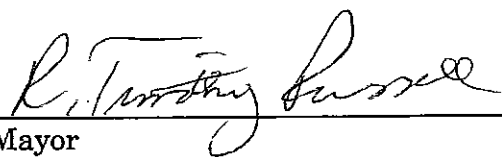
16. Unless terminated in accordance with the terms hereof this Agreement shall continue in effect for a term of ninety-nine (99) years.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the 1st day of ^{June}~~May~~, 1999.

CITY OF FOLEY, ALABAMA

ATTEST:


City Clerk

By: 
Mayor

BALDWIN COUNTY BRIDGE COMPANY, L.L.C.

By: Jim Jones
Title

BALDWIN COUNTY, ALABAMA

By: Frank Butts
Chairman of its County Commission

ATTEST:

Byrd Talh
County Clerk