

## **INTERGOVERNMENTAL SERVICE AGREEMENT**

This Intergovernmental Service Agreement (“Agreement”) is entered into by and between the Baldwin County Commission (hereinafter “County”) and the City of Fairhope, 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 or rights-of-way inside their respective jurisdictions; and

**Whereas**, County has been approved by the Alabama Department of Transportation for Alabama Highway Safety Improvement Project (HSIP) Funding to construct a Roundabout (hereinafter “Project”) at the intersection of Twin Beech Road (also known as County Road 44) and County Road 13 (see Exhibit A); and

**Whereas**, County and City acknowledge and agree that County currently maintains Twin Beech Road within the Project limits and City currently maintains County Road 13 within the Project limits; and

**Whereas**, County agrees to pay the actual matching costs for preliminary engineering, right-of-way acquisition, utility relocation, construction, and construction inspection at an estimated Project matching cost of \$201,250.

**Whereas**, County agrees to accommodate the City’s proposed lighting and beautification upgrades within the project plans and design to the extent that such upgrades do not materially impact the scope or cost of the Project design or delay the Project design; and

**Whereas**, City agrees to provide lighting for the project at City’s expense; pay for any required costs associated with beautification upgrades to the Project (including, but not limited to, irrigation for islands, concrete staining, and concrete stamping); and

**Whereas**, County and City wish to enter into this Agreement to provide for the future maintenance of the constructed roundabout and the portion of any approach roads within the Project limits; and

**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 establish the County's responsibility for Project matching cost for preliminary engineering, right-of-way acquisition, utility relocation, construction, and construction inspection; establish the City's responsibility for beautification costs associated with the Project; and establish the City's responsibility for the maintenance of the constructed roundabout and the portion of any approach roads within the Project limits.
3. **County/City Remains Owner of Right-of-Way until Completion of the Project:** The County, at all times including during the effective term of this Agreement, shall retain exclusive responsibility for and control over Twin Beech Road within the Project limits. The City, at all times including during the effective term of this Agreement, shall retain exclusive responsibility for and control over County Road 13 within the Project limits. The County and City obtains no rights, responsibilities or control for the subject road and rights-of-way as a result of the duties and/or obligations contained anywhere herein either during or following the effective term of this Agreement; except that the City will have exclusive responsibility for and control over the Roundabout and the portion of any approach roads within the Project limits, upon completion of the project and receipt of Quitclaim Deeds from the County.
4. **Maintenance:** Upon completion of the Project and receipt of Quitclaim Deeds, the City shall retain exclusive maintenance responsibilities for the roundabout and the portions of any approach roads within the Project limits.
5. **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.
6. **Financing and Budgeting:** County 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.
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. Comply with all necessary local, State and Federal rules, regulations and laws applicable to this Agreement and the HSIP funding requirements.

- B. Acquire all right-of-way necessary to complete the Project and provide any necessary matching funds for the acquisition.
- C. Complete design and environmental permitting necessary for the Project and provide any necessary matching funds for the design and environmental permitting. County's design will accommodate the City's proposed lighting and beautification upgrades to the extent that such upgrades do not materially impact the scope or cost of the Project design or delay the Project design.
- D. Utilize in-kind employee time and services to advertise the Project for public bid, award the Project to the lowest responsible and responsive bidder (hereinafter "Contractor"), and enter into a Construction Contract for the construction of the Project.
- E. Coordinate utility relocations for the Project and provide any necessary matching funds for the Utility relocation.
- F. Provide material testing and construction, engineering, and inspection (hereinafter "CE&I") for Project and provide any necessary matching funds for CE&I.
- G. Unless provided for separately by City outside the Construction Contract, County shall send invoices to the City for all costs associated with lighting or beautification upgrades to the Project.
- H. Prepare and execute a Quitclaim Deed to the City conveying all rights, title and interest to any right-of-way for the Roundabout and the portion of any approach roads within the project limits.

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

- A. Provide to County, within 30 days of the execution of this Agreement, a written statement describing all required lighting and beautification upgrades for the Project, including any and all information necessary for the County and/or its agents to incorporate the upgrades into the Project design. Beautification upgrades include, but are not limited to, irrigation for landscaped islands, concrete staining, concrete stamping, and any other upgrades not normally funded as part of a County or State project.
- B. Unless provided for separately by City outside the Construction Contract, upon receipt of an invoice from the County for the costs of any lighting and beautification upgrades requested by the City, City shall issue reimbursement to the County within thirty (30) days of the invoice date.
- C. Upon receipt of Quitclaim deeds, take all necessary actions to take over maintenance of the roundabout and the portions of any approach roads within the

Project limits, including, but not limited to, the passage of any necessary resolutions accepting maintenance and annexation of the rights-of-way.

11. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement, with reasonable cause, upon written notice to the City. The County'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 City. In the event of termination by the County, the respective Parties shall be responsible for all actual costs incurred by itself, as set forth in this agreement, through the date of receipt of the requisite termination notice. All notices provided for herein shall be sent as follows:

To City: City of Fairhope  
555 Section St.  
Fairhope, Alabama 36532

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 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 County and City pursuant to this Agreement or in any way related to the work or services performed by the County or City pursuant to this Agreement, excluding those which arise from an alleged injury to a County employee. This indemnification provision shall survive the expiration or termination of this Agreement.

City accepts the improvement, work, property, product, funds and services of the County as a result of the Project in its “WHERE IS”, “AS IS”, condition and acknowledges that the County has made no representation or warranty to City as to, and has no obligation for the condition of, the improvements, work, property, product, funds and services of the County. City assumes the risk of any latent or patent defects or problems that are or may be contained in the improvements, work, property, product, funds and services of the County or City. City agrees that the County shall not be liable for any injury, loss or damage on account of any such defects or problems. City for itself and City Representatives waive and release the County from any claims for injury to persons (other than County employees) or damage to the personal property by reason of the condition of the improvements, work, property, product, funds and services of the County or otherwise.

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 by, 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 related to 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 by and through their duly authorized representatives as of the date of full execution below.

**COUNTY:**  
BALDWIN COUNTY

**ATTEST:**

BY: \_\_\_\_\_ /  
Charles F Gruber /Date  
Chairman

\_\_\_\_\_  
RONALD J. CINK / Date  
County Administrator

State of Alabama )  
County of Baldwin )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles F. Gruber, as Chairman of the Baldwin County Commission, and Ron Cink, as County Administrator of the Baldwin County Commission, whose names 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 \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**CITY:**  
THE CITY OF FAIRHOPE

**ATTEST:**

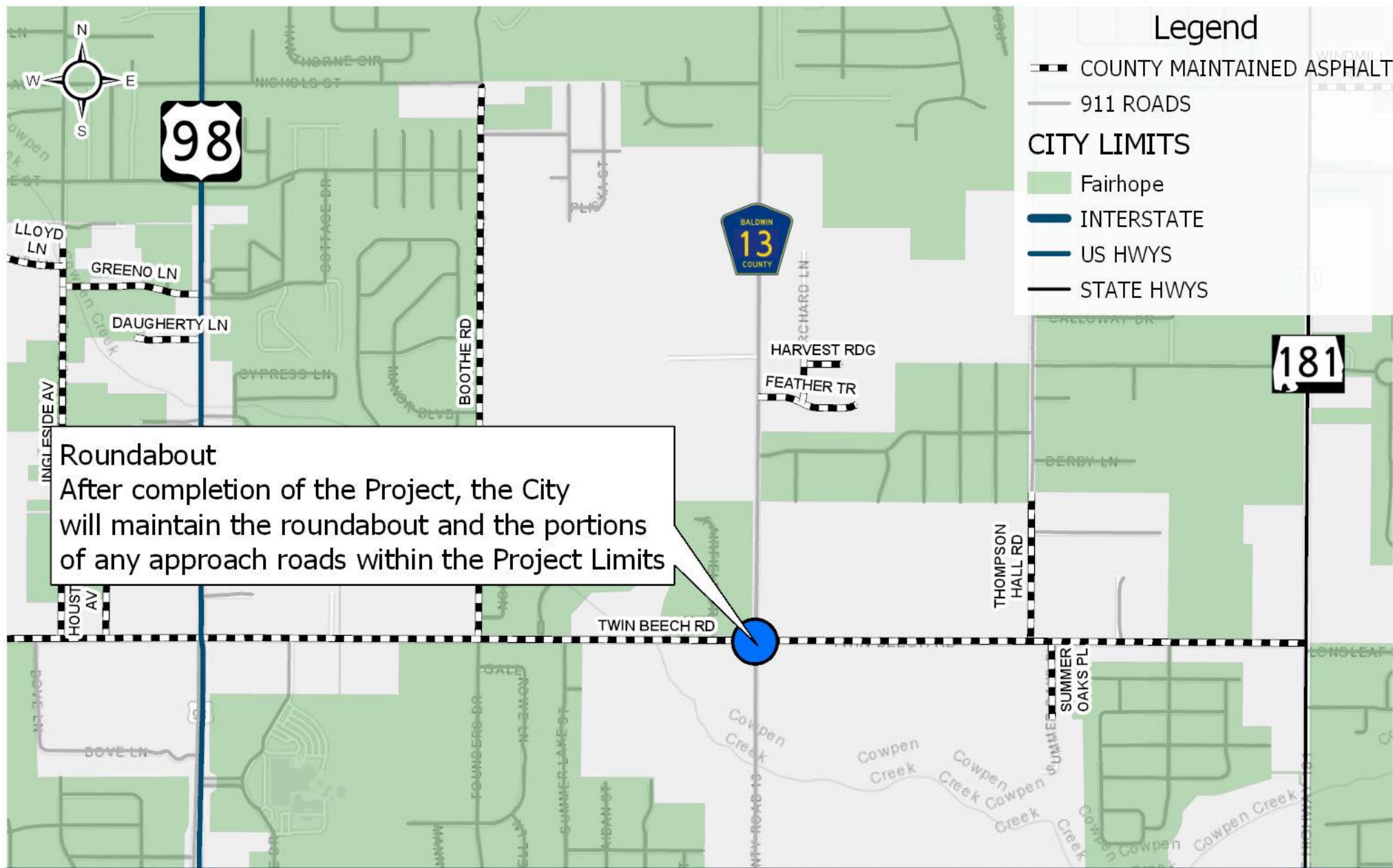
BY: \_\_\_\_\_ / \_\_\_\_\_  
KAREN WILSON /Date LISA A. HANKS /Date  
Mayor City Clerk

State of Alabama )  
County of \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, Karen Wilson, whose name as Mayor of the City of Fairhope, and Lisa Hanks, whose name as City Clerk of the City of Fairhope, 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 Fairhope.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



## Exhibit A

CR13/Twin Beech Roundabout Agreement

Baldwin County  
Highway Department 2018

