

## **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**, with the consent of the City Council of a municipality, the County may establish, construct, and maintain any road or street within the corporate limits of such municipality; and

**Whereas**, County and City acknowledge and agree that Bromley Road, County Road 39, and Jimmy Faulkner Drive, as identified on *Exhibit A*, are situated inside the present incorporated municipal limits of City, and are roads over 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 repair shoulders on Bromley Road, County Road 39, and Jimmy Faulkner Drive, as depicted on *Exhibit A*, inside the present incorporated limits of City; and

**Whereas**, the City agrees to remit to the County any and all labor and equipment costs incurred by the County in its performance of this Agreement; and

**Whereas**, County and City now wish to enter into this Agreement to provide for their joint cooperation for the shoulder repair of Bromley Road, County Road 39 and Jimmy Faulkner Drive, as depicted on *Exhibit A*, which are inside the City’s jurisdiction.

**Whereas**, the County submitted an Estimate Sheet (*Exhibit B*) identifying an approximation (i.e. \$15,853.45) of the actual value for labor and equipment that the County has placed upon the services to repair shoulders on Bromley Road, County Road 39, and Jimmy Faulkner Drive; and

**Whereas**, the City wishes for the County to perform the requested services even though the Estimate Sheet (*Exhibit B*) may or may not reflect the actual cost incurred by the County to perform said services on behalf of the City; 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 for County forces to repair shoulders on Bromley Road, County Road 39, and Jimmy Faulkner Drive, as depicted on *Exhibit A*, inside the corporate limits of the City.
3. **Actual Cost:** The City of Spanish Fort will be billed quarterly for the actual labor and equipment cost.
4. **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 specifically identified and depicted on *Exhibit A*. The County, shall obtain no rights, responsibilities or control for 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 corporate 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. **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.
7. **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.
8. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
9. **Term:** The term of this Agreement shall be for twenty-four (24) 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 contract has been approved by the Parties.
10. **Services to be Performed by County:**
  - A. County forces and equipment to perform the work to repair shoulders of Bromley Road, County Road 39, and Jimmy Faulkner Drive, as depicted on *Exhibit A*, inside the corporate limits of the City.
  - B. Remit invoice to the City for actual labor and equipment costs incurred upon completion.  
**Note: County cannot sell bid item materials to the City.**
11. **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. 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.
- C. Adjust and/or relocate all utilities for the project without cost to the County, if applicable.
- D. Promptly remit payment within 30 days of the receipt of invoice for all actual costs incurred by the County.
- E. Provide any materials needed to complete said work.

12. **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. In the event of termination by either party, the City shall be responsible for all costs incurred by the County through the date of receipt of the requisite termination notice. All notices provided for herein shall be sent as follows:

To Town: City of Spanish Fort  
P.O. Box 7226  
Spanish Fort, Alabama 36577

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

13. **Indemnity:** City accepts the improvement, work, property, product, 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, and services of the County. However, nothing contained herein shall prevent either party from good faith performance of the services to be performed under the terms of this agreement including without limitation the remediation or correction of any work or services performed by either party hereunder. City assumes 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 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 or damage to the personal property by reason of the condition of the improvements, work, property, product, and services of the County or otherwise.

Furthermore, to the fullest extent allowed by law, City shall defend, indemnify, and hold County harmless from and against all demands, actions, and claims of any description whatsoever, for property damage, personal injury (including death), actions in trespass, and all other claimed loss, injury or damage, including, but not limited to, attorneys' fees and costs, arising out of, relating to, or resulting from any and all acts or omissions in relation to the obligations hereunder.

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.

14. **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.
15. **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.
16. **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.
17. **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.
18. **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.

**COUNTY:**  
BALDWIN COUNTY

\_\_\_\_\_/\_\_\_\_\_  
BILLIE JO UNDERWOOD / DATE  
CHAIRMAN

ATTEST:

\_\_\_\_\_/\_\_\_\_\_  
WAYNE DYESS / DATE  
COUNTY ADMINISTRATOR

STATE OF ALABAMA       )  
COUNTY OF BALDWIN    )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that BILLIE JO UNDERWOOD and WAYNE DYESS, as Chairman and County Administrator of the Baldwin County Commission, respectively, whose names 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 for and as an act of the Baldwin County Commission.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CITY:**  
THE CITY OF SPANISH FORT

\_\_\_\_\_  
MAYOR MICHAEL M. MCMILLAN /Date

ATTEST:

\_\_\_\_\_  
MARY LYNN WILLIAMS /Date  
CITY CLERK

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that MAYOR MICHAEL M. MCMILLAN, and MARY LYNN WILLIAMS, whose names as Mayor and City Clerk of the 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 with full authority to do so, as an act of the City of Spanish Fort, Alabama.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_