



COUNTY COMMISSION

BALDWIN COUNTY

312 COURTHOUSE SQUARE, SUITE 12
BAY MINETTE, ALABAMA 36507

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www.baldwincountyal.gov

MEMBERS

DIST. 1. FRANK BURT, JR.
2. ROBERT E. (BOB) JAMES
3. J. TUCKER DORSEY
4. CHARLES F. GRUBER

January 17, 2012

The Honorable Tim Kant
Mayor
City of Fairhope
Post Office Drawer 429
Fairhope, Alabama 36533

RE: Inter-local Agreement between the City of Fairhope and the Baldwin County Commission – Storm Water Detention Site

Dear Mayor Kant:

The Baldwin County Commission, during its regularly scheduled meeting held on January 17, 2012, approved an Inter-Local Agreement between the City of Fairhope and the Baldwin County Commission for the design, construction and maintenance of a regional storm water detention site in Fairhope. *(This agreement will be effective upon full execution by all parties and will be congruent with the Lease executed by and between the County and Eastern Shore Shopping Center, LLC, on December 10, 2009, and will terminate only upon the termination and/or expiration of the Lease and remain in effect until such time.)*

Enclosed, please find a **fully executed copy** of the *Inter-Local Agreement* for your records.

If you have any questions or need further assistance, please do not hesitate to contact me or Cal Markert, County Engineer, at (251) 972-8557.

Sincerely,

ROBERT E. JAMES, Chairman
Baldwin County Commission

REJ/enc/Item #HA4

CC: Cal Markert
David Brewer
Lisa Sangster
Taylor Rider
Lawrence Wilson
Lisa Hanks, City Clerk, City of Fairhope

Enclosure(s)

INTER-LOCAL AGREEMENT
BETWEEN
THE BALDWIN COUNTY COMMISSION
AND
THE CITY OF FAIRHOPE

This Agreement is entered into by and between the Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama, and a political subdivision of the State of Alabama (hereinafter referred to as "COUNTY"), and the City of Fairhope, Alabama, an Alabama municipal corporation (hereinafter referred to as "CITY"), for the purpose of design, construction and maintenance of a regional storm water detention site in Fairhope, Alabama.

WITNESSETH:

WHEREAS, the COUNTY respectfully requested the CITY to purchase certain property located in Fairhope, Alabama, more commonly known as the "Winn Dixie pond", in an effort to alleviate surrounding drainage concerns; and

WHEREAS, the CITY adopted RESOLUTION NO. 1876-11, on the 14th day of November, 2011, authorizing the Mayor to enter into an inter-local agreement between the CITY and the COUNTY.

NOW, THEREFORE, COUNTY and CITY, for and in consideration of the premises and the mutual covenants and conditions stated herein, the sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. The CITY shall negotiate all terms associated with the acquisition of the "Winn-Dixie pond" property and the transfer and conveyance of the same from Victory Real Estate Investments to the CITY, including all necessary

easements or agreements for access, ingress and egress for the construction and maintenance of the same, as determined by the Baldwin County Engineer, at the CITY's sole cost and expense, and the CITY shall provide the COUNTY with documentation of such transfers, conveyances and agreements, said property being more particular described as follows: Insert Legal Description – (The legal description is pending a survey and plat as contracted to a local engineering firm.)

2. The COUNTY shall engineer, design and construct the regional storm water detention site and facilities, based on the design approved by the Baldwin County Engineer, in his discretion, as per all applicable Federal, State and Local Laws, and the County shall be responsible for all costs associated with the engineering, design and construction of the same.
3. Upon completion of the project as determined by the Baldwin County Engineer, the CITY shall automatically assume all responsibility and liability for the regional storm water detention site and facilities, including, but not limited to, maintenance, operation, use, monitoring, compliance and permitting of the regional storm water detention site and facilities and all costs and expenses related thereto, and the COUNTY shall have no further liability or responsibility for the same. The execution of this Agreement by the CITY shall constitute acceptance of all liability and responsibility for the regional storm water detention site and facilities, and the CITY agrees to take any other action deemed necessary to undertake and evidence such responsibility and liability for such maintenance and use of the regional storm water detention site and facilities.
4. The Baldwin County Engineer shall provide the CITY with a proposed maintenance plan after construction is complete to include routine maintenance guidelines for the CITY, which will provide suggestions as to

maintenance. However, neither the COUNTY nor the Baldwin County Engineer shall have any responsibility for the maintenance of the regional storm water detention site and facilities which shall be the sole responsibility of the CITY.

5. No Agency Relationship.
 - a. Neither party shall act as an agent for the other, nor be considered an agent of the other. It is neither the express nor the implied intent of the CITY or the COUNTY to create an agency relationship pursuant to this Agreement. Therefore, the parties do not in any manner act on behalf of the other, and the creation of such a relationship is prohibited and void.
 - b. The parties agree that the County shall be responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services.
 - c. Individuals performing work for the COUNTY under this Agreement report to and are supervised by COUNTY personnel only. Requests of CITY should be directed to a COUNTY employee who has been specifically designated by the COUNTY to oversee operations and services provided by this Agreement.
 - d. CITY must provide and ensure COUNTY's access to the property and facilities upon necessity of said access for the completion of the services set forth in this Agreement.
6. The term of this Agreement shall be congruent with the term of the Lease executed by and between the COUNTY and Eastern Shore Shopping Center, LLC, on or about December 10, 2009, and any amendments thereto, for the purposes of the COUNTY constructing and operating a transit hub station for BRATS services, including any extensions of the term of said Lease. This Agreement shall terminate only upon the termination and/or expiration of the Lease, and any extensions thereof, and shall remain in effect until such time.

7. This Agreement may be amended or modified only by the written consent and agreement of the parties to this Agreement at the time of such amendment.
8. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce every provision of this Agreement.
9. This Agreement and the documents referred to in this Agreement constitute the entire agreement between the parties, and there are no other responsibilities, conditions, covenants or agreements which shall be binding upon the parties. No work, service, or liability on part of the COUNTY or CITY other than that specifically mentioned in this Agreement is included or intended.
10. The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.
11. No provision contained herein shall be construed to confer any benefit, direct or indirect, on any person or entity who is not a party to the execution of this Agreement, and no person or entity shall be deemed a third-party beneficiary of this Agreement.
12. The CITY represents and warrants that it has the authority to enter into this Agreement on the terms and conditions contained herein.
13. In the event that any of the provisions, or portions thereof, of this Agreement shall be held void or unenforceable or invalid by any competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

14. This Agreement shall be deemed to have been made within the State of Alabama, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder shall be determined under, governed by and construed in accordance with the laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.
15. The effective date of this Agreement shall be the date of full execution by all parties to this Agreement as set forth below.

IN WITNESS WHEREOF, the parties hereto, by and through their duly authorized representatives, have executed this Agreement on the dates set forth by their respective signatures.

BALDWIN COUNTY COMMISSION



ROBERT JAMES

Chairman

Date: 1-19-2012



ATTEST:



David A. Z. Brewer, County Administrator

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Lisa O. Sangster, a Notary Public, in and for said County in said State, hereby certify ROBERT JAMES, whose name as Chairman of the Baldwin County Commission, as the governing body of BALDWIN COUNTY, ALABAMA, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said governmental body.

Given under my hand and seal this 19th day of January, 2012.



Lisa O Sangster
Notary Public, Baldwin County, Alabama
My Commission Expires: 7-9-2014

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 9, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

CITY OF FAIRHOPE, ALABAMA

Timothy M. Kant
Mayor
Date: 1-18-12

ATTEST:

Constance H. Antinorella
Asst. City Clerk

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Pandora J Heathcote, a Notary Public, in and for said County in said State, hereby certify TIMOTHY M. KANT, whose name as Mayor of THE CITY OF FAIRHOPE, ALABAMA, an Alabama municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 18th day of January, 2012.



Pandora J Heathcote
Notary Public, Baldwin County, Alabama
My Commission Expires: 6/19/2014