



## COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
Fax (251) 580-2500  
www.baldwincountyal.gov

MEMBERS  
DISTRICT 1. FRANK BURT, JR.  
2. CHRIS ELLIOTT  
3. J. TUCKER DORSEY  
4. CHARLES F. GRUBER

September 1, 2015

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

**RE: Alabama Transportation Rehabilitation and Improvement Program  
(ATRIP) Project No. 02-057-11 - Intersection Improvements at County Road  
48 and County Road 13 - Intergovernmental Service Agreement**

Dear Mayor Kant:

The Baldwin County Commission, during its regularly scheduled meeting held on September 1, 2015, approved an *Intergovernmental Service Agreement* between the City of Fairhope and Baldwin County for Alabama Transportation Rehabilitation and Improvement Program (ATRIP) Project No. 02-057-11 - Intersection Improvements at County Road 48 and County Road 13 in Fairhope, Alabama. This *Agreement* shall become effective upon the date of full execution by both parties and terminate thirty-six (36) months later.

Please find enclosed a **fully executed original Intergovernmental Service Agreement** for your file.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-6833 or Cal Markert, County Engineer, at (251) 937-0371.

Sincerely,

CHARLES F. GRUBER, Chairman  
Baldwin County Commission

CFG/met Item BG1

cc: Cal Markert  
Wesley Pennington  
Lisa Sangster  
Amanda Reid

ENCLOSURE

## **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 an Alabama Transportation Rehabilitation and Improvement Program (ATRIP) grant that will help fund the construction of a Roundabout at County Road 48 and County Road 13; and

**Whereas**, County and City acknowledge and agree that City maintains the sections of County Road 13 and County Road 48 that lie within the project limits of the approved ATRIP project, Project No. 0205711 (sometimes referred to as the “ATRIP project”); and

**Whereas**, City agrees to pay the County 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, and construction cost and 50% of any overruns associated with these project cost, and it is estimated that 50% of the matching cost will be \$286,144.00 for a Roundabout at County Road 48 and County Road 13, the ATRIP project; and

**Whereas**, County agrees to fund 50% of actual matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, and construction cost, and 50% of any overruns associated with these projects cost, and it is estimated that 50% of the matching cost will be \$286,144.00 for a Roundabout at County Road 48 and County Road 13, the ATRIP project; and

**Whereas**, County and City now wish to enter into this Agreement to provide for their joint cooperation to fund the preliminary engineering, right-of-way acquisition cost, utility relocation and construction cost for the ATRIP project.

**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 fund the matching cost for preliminary engineering, right-of-way acquisition cost, utility relocation, and construction cost for the Roundabout at County Road 48 and County Road 13, the ATRIP project.
3. **City Remains Owner of Right-of-Way:** The City, at all times including during the effective term of this Agreement and at all times thereafter, shall retain exclusive responsibility for and control over County Road 48 and County Road 13. The County 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.
4. **Maintenance:** The City, at all times including during the effective term of this Agreement and at all times thereafter, shall retain exclusive maintenance responsibilities for the sections of County Road 13 and County Road 48 that lie within the project limits of the approved ATRIP project.
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:** 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 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. **Reimbursements:** The City will reimburse the County for the amounts listed in this agreement as various phases of the construction of this project are completed within forty-five (45) days of receipt of an invoice by the City.
10. **Services to be Performed by County (the Project):**
  - A. Comply with all necessary local, State and Federal rules, regulations and laws applicable to this Agreement and the ATRIP grant.
  - B. Acquire all right-of-way necessary to complete the project.



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. 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 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.

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.
19. **ATRIP Grant Agreement:** The ATRIP project grant agreement calls for the applicant, the County, to agree to maintain the improvements following the completion of the project. This Intergovernmental Service Agreement sets forth the agreements and obligations of the County and City regarding the present and future maintenance of the ATRIP project. Notwithstanding anything contained in the ATRIP project grant application or agreement, the City and County agree that the City's and the County's relative rights, responsibilities and duties concerning the future maintenance, repair and responsibility for the Roundabout at County Road 48 and County Road 13, the ATRIP project, are as stated in this Intergovernmental Service Agreement which shall continue in full force and effect. Neither the City's nor the County's relative rights or responsibilities concerning present and future maintenance of subject ATRIP project are or will be changed or modified by the ATRIP grant agreement to be executed between the County and the State.

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 19/1/15  
Charles F. Gruber  
Chairman

Ronald J. Cink /Date 19-1-15  
Ron Cink  
Interim County Administrator



CITY:  
THE CITY OF FAIRHOPE

ATTEST:

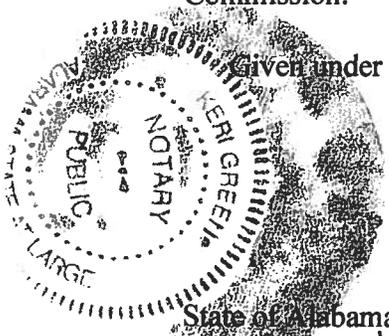
BY: [Signature] /Date 8/25/15  
Tim Kant  
Mayor

[Signature] /Date 8/25/15  
Lisa A. Hanks Jennifer  
City Clerk Fidler,  
Public Works Director

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, Interim 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 1st day of September 2015.



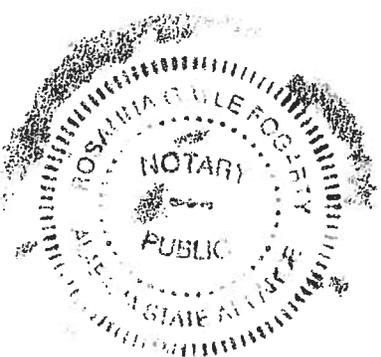
[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_ My Commission Expires 11/23/2015

State of Alabama )  
County of Baldwin )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify Jennifer Fidler that, Tim Kant, whose name as Mayor of the City of Fairhope, and Lisa A. 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.

Public Works Director

Given under my hand and official seal, this the 25th day of August, 2015.



[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_ My Commission Expires 03/23/2016

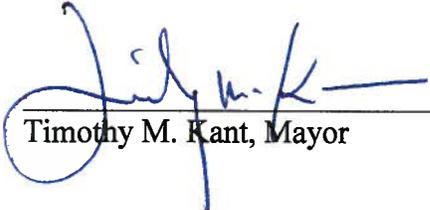
**RESOLUTION NO. 2392-15**

**WHEREAS**, the City of Fairhope endorsed and supported the partnership with the Baldwin County Commission and agreed to allocate its share for the Alabama Transportation Rehabilitation and Improvement Program (ATRIP) Grant Funding for an intersection improvement project – a Roundabout at County Road 13 and County Road 48 on June 10, 2013 via Resolution 2090-13; and

**WHEREAS**, the City of Fairhope and the Baldwin County Commission now desire to enter into an Intergovernmental Service Agreement for joint cooperation to fund the preliminary engineering and matching construction costs for a Roundabout at County Road 48 and County Road 13 ATRIP Project with the City's preliminary estimate being \$304,692.57.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE**, that Timothy M. Kant is hereby authorized to execute an Intergovernmental Service Agreement the City of Fairhope and the Baldwin County Commission for joint cooperation to fund the preliminary engineering and matching construction costs for a Roundabout at County Road 48 and County Road 13 ATRIP Project with the City's preliminary estimate being \$304,692.57.

Adopted on this 24th day of August, 2015

  
\_\_\_\_\_  
Timothy M. Kant, Mayor

Attest:

  
\_\_\_\_\_  
Lisa A. Hanks, MMC  
City Clerk