



## COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
Fax (251) 580-2500  
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MEMBERS  
DISTRICT 1. JAMES E. BALL  
2. JOE DAVIS, III  
3. BILLIE JO UNDERWOOD  
4. CHARLES F. GRUBER

May 7, 2019

The Honorable Karen Wilson  
Mayor  
City of Fairhope  
Post Office Drawer 429  
Fairhope, Alabama 36533

**RE: Traffic Light Installation at the Intersection of County Road 34 (Old Battles Road) and U.S. Highway 98 - Project**

Dear Mayor Wilson:

The Baldwin County Commission, during its regularly scheduled meeting held on May 7, 2019, approved an *Intergovernmental Service Agreement* between Baldwin County and the City of Fairhope for the installation of a traffic signal at the intersection of County Road 34 (Old Battles Road) and U.S. Highway 98, with the City of Fairhope providing the local matching funds estimated at \$70,000.00, with any overruns being split 50/50 between Baldwin County and the City of Fairhope.

Baldwin County will provide services as project manager during the design and construction of the signal and be responsible for maintenance of the signal after construction.

Enclosed is 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 Joey Nunnally, County Engineer, at (251) 937-0371.

Sincerely,

CHARLES F. GRUBER, Chairman  
Baldwin County Commission

CFG/met Item BM2

cc: Joey Nunnally  
John Sedlack  
Lisa Sangster

ENCLOSURE(S)

## 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 Eastern Shore Metropolitan Planning Organization for the use of Surface Transportation Funding to construct, and incorporate into the adaptive signal system, a new traffic signal at the intersection of County Road 34, Old Battles Road, and US 98 (hereinafter "the Project") as shown in Exhibit A; and

**Whereas**, the estimated cost to construct the Project is \$350,000; and

**Whereas**, County and City acknowledge and agree that County currently maintains County Road 34 and Old Battles Road within the Project limits, and the Alabama Department of Transportation (hereinafter "ALDOT") currently maintains US 98 within the Project limits; and

**Whereas**, County and City acknowledge a mutual understanding that ALDOT has agreed to provide the preliminary engineering services for the Project by a separate agreement; and

**Whereas**, County agrees to donate County employee time and resources to let the Project out for public bid; coordinate utility relocations; and provide construction, engineering, and inspection (hereinafter "CE&I") for Project construction; and

**Whereas**, City agrees to pay the actual matching costs for utility relocation, construction, and any other project costs not covered by Baldwin County in-kind services or ALDOT, at an estimated cost of \$70,000; and

**Whereas**, City and County jointly agree to cooperate in pursuing, whether through additional MPO funding or other funding, 100% of the costs of any Project overruns in excess of \$350,000; and

**Whereas**, City and County agree to split equally (50/50) all unreimbursable costs in excess of \$350,000, subject to the approval of and appropriation of the Fairhope City Council; and

**Whereas,** County and City wish to enter into this Agreement to provide for the construction and funding of the proposed Project; and

**Whereas,** County agrees to be responsible for maintenance of the Project after the Project is complete;

**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:
  - A. Establish the County's responsibility to donate employee time and resources to let the Project out for public bid, coordinate utility relocations, and provide construction, engineering, and inspection (hereinafter "CE&I") for Project construction;
  - B. Establish the City's responsibility for Project matching costs for utility relocation, construction, and any other Project costs, not to exceed \$70,000;
  - C. Establish the City and County's responsibility to cooperate in pursuing 100% of the costs of any Project overruns in excess of \$350,000;
  - D. Establish the City and County's responsibility to split equally (50/50) all overruns in excess of \$350,000, subject to the Fairhope City Council's approval and appropriation of funds;
  - E. Establish the County's responsibility for maintenance after completion of the Project.
3. **County Remains Owner of Right-of-Way:** The County, at all times including during the effective term of this Agreement, shall retain exclusive responsibility for and control over Old Battles Road and County Road 34 within the Project limits. The County and City obtain no additional 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.

However, nothing in this Agreement shall preclude or inhibit the City's future acceptance the above-mentioned roadways or traffic signal for maintenance through agreement, annexation, or other legal means.

4. **Maintenance:** Upon completion of the Project, the County shall retain exclusive responsibility for the cost of maintaining the new traffic signal. The terms of such maintenance shall be established with ALDOT through a separate agreement.

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 and City, respectively, 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 Surface Transportation funding requirements.
  - B. Provide input into the project design as required by ALDOT.
  - C. Donate 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.
  - D. Donate in-kind employee time and services to coordinate utility relocations for the Project and for the Utility relocations.
  - E. Donate in-kind employee time and services to provide construction, engineering, and inspection (hereinafter "CE&I") for the Project.
  - F. Make timely payments to utility companies and to the Contractor for completed work in accordance with utility relocation plans and the Construction Contract.
  - G. Send reimbursement requests to ALDOT for all reimbursable payments made to utility companies and the Contractor.
  - H. Send invoices to the City for the unreimbursed portion of all utility relocation and construction, as well as any non-reimbursable costs necessarily incurred to complete the Project, not to exceed \$70,000.

- I. In the case that the Project costs overrun \$350,000, cooperate with the City to pursue funding for 100% of the costs of said overruns.
- J. Send invoices to the City for 50% of the unreimbursed portion of all Project costs in excess of \$350,000.
- K. Retain exclusive responsibility for the cost of maintaining the new traffic signal including entering into any required agreements with ALDOT.

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

- A. Upon receipt of an invoice from the County for unreimbursed Project costs, City shall issue reimbursement to the County within thirty (30) days of the invoice date, except that the aggregate of said reimbursements shall not exceed \$70,000.
- B. In the case that the Project costs overrun \$350,000, cooperate with the County to pursue funding for 100% of the costs of said overruns.
- C. Upon receipt of an invoice from the County for 50% of the unreimbursed Project costs in excess of \$350,000, City shall, subject to approval and appropriation by the Fairhope City Council, issue reimbursement to the County within thirty (30) days of the invoice date.

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 that party in accordance with the terms of 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 South 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 way related to the work or services performed by the County or City pursuant to this Agreement, excluding those claims 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, and assurances, without limitation, contained within Section 12 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.

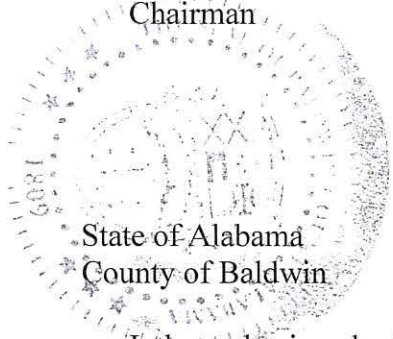
IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized representatives as of the date of full execution below.

COUNTY:  
BALDWIN COUNTY

ATTEST:

BY: Charles F Gruber /Date 15-7-19  
Charles F Gruber  
Chairman

Wayne Dyess /Date 5/7/19  
~~RONALD J. CINK~~  
~~Budget Director~~  
Wayne Dyess  
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 ~~Ronald J. Cink~~ <sup>Wayne Dyess</sup> ~~County Administrator~~ <sup>County Administrator</sup>, as ~~Budget Director~~ 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 7th day of May, 2018.

Monica E. Taylor  
Notary Public  
My Commission Expires



**CITY:**  
THE CITY OF FAIRHOPE

**ATTEST:**


BY:  /  
KAREN WILSON /Date  
Mayor

 / 4/16/19  
LISA A. HANKS /Date  
City Clerk

State of Alabama )  
County of Baldwin )

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.

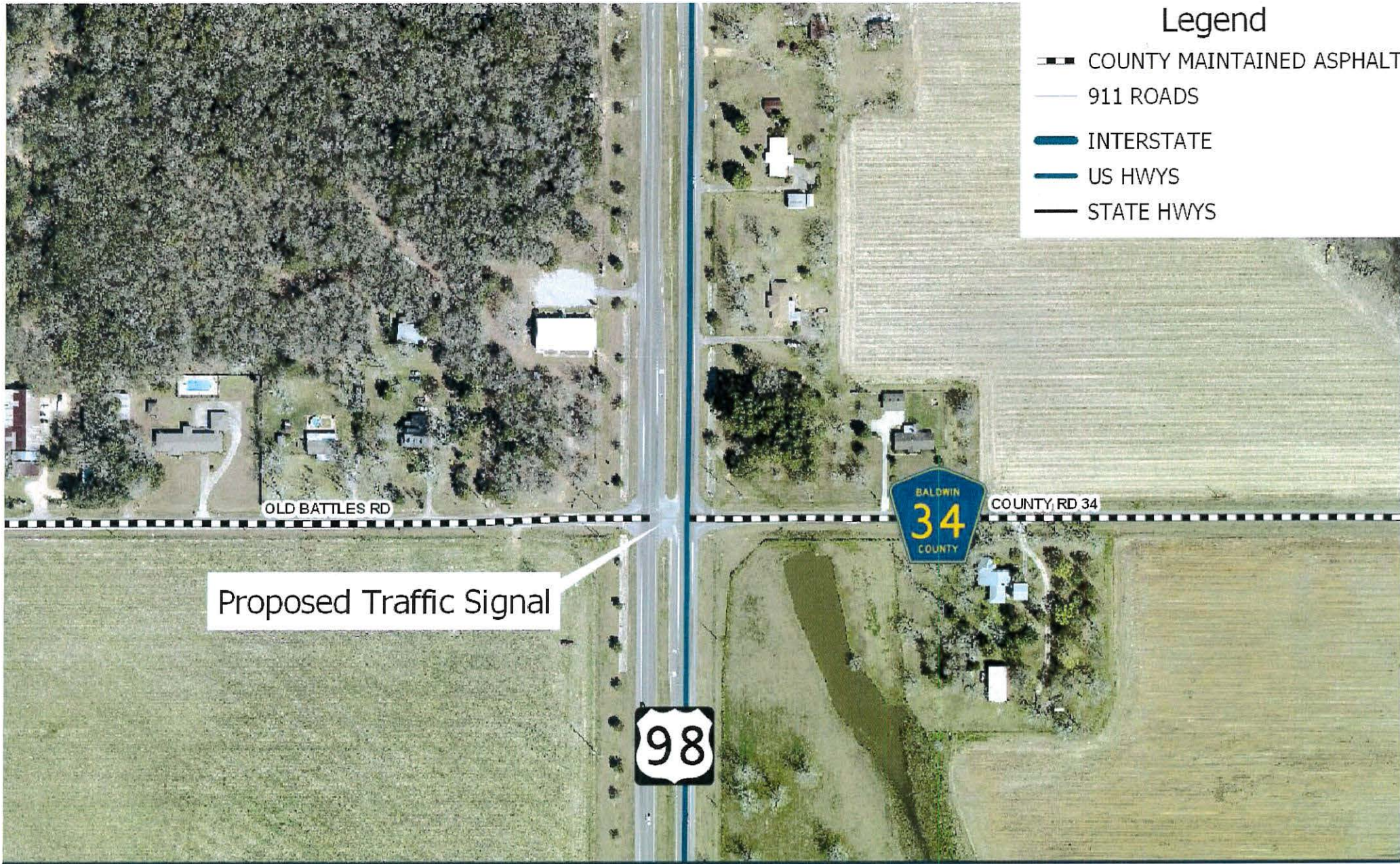
Given under my hand and official seal, this the 16<sup>th</sup> day of April, ~~2018-~~ <sup>2019</sup> RF

  
Notary Public  
My Commission Expires: 04/11/2020



# Legend

-  COUNTY MAINTAINED ASPHALT
-  911 ROADS
-  INTERSTATE
-  US HWYS
-  STATE HWYS



## Exhibit A US 98 / CR 34 Signal Agreement



Baldwin County  
Highway Department 2018

22 October 2018

**RESOLUTION NO. 3203-18**

**A RESOLUTION OF THE FAIRHOPE CITY COUNCIL TO CONTRIBUTE  
THE TWENTY (20%) LOCAL MATCH REQUIREMENT FUNDING FOR  
SIGNALIZATION OF THE INTERSECTION OF GREENO OLD BATTLES ROADS**

**WHEREAS**, the City of Fairhope is a member of the Eastern Shore Metropolitan Planning Organization (MPO); and

**WHEREAS**, Federal funding is available through the MPO for Long Range Transportation Plan projects; and

**WHEREAS**, Federal law requires a twenty percent (20%) local match for projects utilizing Federal funds; and

**WHEREAS**, the Baldwin County Commission and the City of Fairhope desire to install signalization of the intersection of Greeno and Old Battles Roads with the County handling all project administration, letting and construction inspection, and accept all signal maintenance after installation; and

**WHEREAS**, the estimated local match for the Project is not to exceed \$70,000.00 by the City of Fairhope and the Eastern Shore Metropolitan Planning Organization providing the remaining 80% funding; and

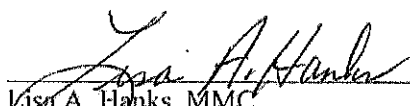
**WHEREAS**, the MPO requires a resolution from sponsoring local government committing the sponsoring government to providing the 20% local match for Project funds as set forth above.

**NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE**, that the City Council request the Eastern Shore Metropolitan Planning Organization to fund the Project to install signalization of the intersection of Greeno and Old Battles Roads and commits to provide the required local match not to exceed \$70,000.00; and authorize Mayor Karin Wilson to execute the necessary documents with the Baldwin County Commission, and if necessary, with Alabama Department of Transportation for Project.

ADOPTED THIS 22ND DAY OF OCTOBER, 2018

  
\_\_\_\_\_  
Karin Wilson, Mayor

**ATTEST:**

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