



**COUNTY COMMISSION
BALDWIN COUNTY**

312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 937-0264 Main
(251) 580-2500 Fax

www.baldwincountyal.gov

November 8, 2021

Anu Gary
Administrative Services Manager
agary@baldwincountyal.gov
(251) 580-2564

Kristen M. Rawson
Assistant Administrative Services Manager
Kristen.rawson@baldwincountyal.gov
(251) 580-1696

The Honorable Ralph Hellmich
Mayor
City of Foley
Post Office Box 1750
Foley, Alabama 36536
ATTN: Katy Taylor, Clerk

RE: Intergovernmental Service Agreement with Municipalities for the Use of County Voting Machines and the Services of the County Voting Machine Custodian and Employees for Municipal Elections

Dear Mayor Hellmich:

Please find enclosed a **fully executed copy** of the *Intergovernmental Service Agreement* between the Baldwin County Commission and municipalities in Baldwin County, Alabama, approved during the October 5, 2021, Baldwin County Commission meeting to allow the municipalities to use the County's voting machines and the services of the County Voting Machine Custodian for municipal elections.

If you have any questions or need further assistance, please do not hesitate to contact Anu Gary, Administrative Services Manager, at (251) 580-2564.

Sincerely,

KRISTEN M. RAWSON
Assistant Administrative Services Manager
Baldwin County Commission

KMR/vk Item BA5

cc: Wayne Dyess
Tammy Chance
Judge Harry D'Olive
Matt Fail
Brian Peacock

ENCLOSURE(S)

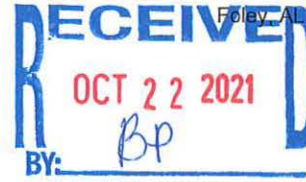


City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 21-1397-RES



File Number: 21-0623

Enactment Number: 21-1397-RES

A Resolution Approving an Intergovernmental Service Agreement for the Use of County Voting Machines and the Service of the County Voting Machine Custodian and Employees for Municipal Elections

WHEREAS, as authorized by Code of Alabama 1975, SECTION 11-102-1, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually, and

WHEREAS, pursuant to Code of Alabama 1975, Section 11-102-3, no contract entered into shall take effect until the contract has been approved by the governing body of each of the contracting municipalities or counties. Approval by a county governing body shall be by adoption of a resolution, and approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation, and

WHEREAS, the municipalities of Baldwin County, Alabama, from time to time have requested assistance in their administration of the electoral franchise benefiting the public by providing the municipalities with the use, at no cost, of County-owned voting machines during municipal elections, and

WHEREAS, the State of Alabama Ethics Commission, Advisory Opinion No. 2018-03 issued on June 6, 2018, states that counties and municipalities may enter into contracts through which the municipality reimburses the county for the use of the County's election equipment and county employees who possess the requisite skill and knowledge to operate the equipment; but municipalities may not directly engage the county employee to do so under these facts without putting the employee in the position of violating Code of Alabama 1975, Section 36-25-S (a) and (c), and

WHEREAS, to cooperate in the administration of the electoral franchise benefiting the public, the City of Foley, Alabama wishes to enter into an Intergovernmental Service Agreement with Baldwin County, Alabama, to allow the use of the County-owned voting machines, at no cost, for municipal elections with the understanding that the City shall be responsible for all costs associated with the provision of services of the County Voting Machine Custodian and any and all other election related costs and to provide for the reimbursement of County for the costs associated with the services which may be provided by the County Voting Machine Custodian, a County employee, or any other County employee in connection with the

transportation, installation, service, maintenance, testing and use of County voting machines during municipal elections, and

WHEREAS, in order for the County to provide the services set forth above, the Baldwin County Commission requires that the County and the municipalities in Baldwin County, Alabama, enter into an Intergovernmental Service Agreement for the aforementioned purposes.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves the terms of the Intergovernmental Services Agreement attached hereto to be entered into between the City of Foley, Alabama and the Baldwin County Commission regarding the use, transportation, installation, maintenance and testing of County-owned voting machines and the use of services of County employees, including the County Voting Machine Custodian and his or her designee(s).

SECTION 2: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, APPROVED AND ADOPTED this 18th day of October 2021.



President's Signature

[Handwritten Signature]

Date

10-18-21

Attest by Clerk

[Handwritten Signature]

Date

10-18-21

Sent to Mayor

[Handwritten Signature]

Date

10-18-21

INTERGOVERNMENTAL SERVICE AGREEMENT

This Intergovernmental Service Agreement ("Agreement") is entered into by and between the Baldwin County Commission (hereinafter "County") and the City/Town of Foley, Alabama (hereinafter "City/Town"), as follows:

RECITALS

WHEREAS, County is the duly formed governing body in and for Baldwin County, Alabama, and City/Town is an incorporated municipality of the State of Alabama; and

WHEREAS, as authorized by Code of Alabama 1975, Section 11-102-1, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually; and

WHEREAS, no contract entered into pursuant to this chapter shall take effect until the contract has been approved by the governing body of each of the contracting municipalities or counties. Approval by a county governing body shall be by adoption of a resolution, and approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation; and

WHEREAS, to cooperate in the administration of the electoral franchise benefiting the public, the County allows the Cities/Towns to use the County's voting machines, at no cost, for municipal elections with the understanding that each municipality shall be responsible for all costs associated with the provision of services of the County Voting Machine Custodian and any and all other election related costs; and

WHEREAS, the City/Town has requested that the County assist the City/Town in its administration of the electoral franchise benefiting the public by providing the City/Town with the use, at no cost, of County-owned voting machines as requested from time to time during municipal elections; and

WHEREAS, the City/Town agrees to remit to the County any and all actual costs for labor, expenses and equipment incurred by County in its performance of this Agreement; and

WHEREAS, County and City/Town now wish to enter into this Agreement to provide for the reimbursement of County for the costs associated with the services which may be provided by the County Voting Machine Custodian, a County employee, or any other County employee in connection with the transportation, installation, service, maintenance, testing and use of County voting machines during municipal elections.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, County and City/Town 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 and Services to Be Performed:** The parties acknowledge and agree that the purpose of this Agreement is to provide for the reimbursement of County costs associated with the services which may be provided by the County Voting Machine Custodian, or his or her designee(s), in connection with the transportation, installation, service, maintenance, testing and use of County-owned voting machines during municipal elections. Upon request by the City/Town and approval by the County Administrator, the County Voting Machine Custodian, or his or her designee(s), shall be responsible for transporting, installation, servicing, testing and maintaining County Voting Machines for use in municipal elections, and the City/Town shall be responsible for reimbursement of the actual cost to the County for the provision of such services and for expenses incurred in connection with transport, maintenance, service, use and installation of the voting machines.
3. **Exclusive Contract:** The City/Town acknowledges that, due to the possibility of damaging the machines, only the County Voting Machine Custodian, or his or her designee(s), shall transport, install, service, maintain and/or test the voting machines for use during municipal elections. Notwithstanding this provision, the County Administrator may give consent for the City/Town to use the services of (manufacturer) to service or test such machines. The City/Town acknowledges that it will not and may not contract directly with County employees for the provision of such services.
4. **Reimbursement:** The County Voting Machine Custodian, or such other County employees as are designated to perform services under this agreement, shall maintain a record of all time and expenses incurred in connection with the transportation, installation, testing, service, maintenance and use of County voting machines. Prior to the election, upon request, the County shall provide the City/Town with the hourly rate to be charged by the County for the services of the County Voting Machine Custodian and/or his or her designee(s). Within 21 days after the election, the County shall provide an itemized invoice to the Town/City which reflects the cost to the County for the time and expenses incurred by such County employees and the County in connection with the use of the voting machines. Upon receipt of such invoice, the City/Town shall pay the invoiced sum within thirty (30) days.
5. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
6. **Term:** The term of this Agreement shall be for three (3) years 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. The parties may renew the

contract for another term of not more than three (3) years on the same or amended terms by the same method by which the original contract was adopted.

7. **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/Town 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 City/Town:

City of Foley
Mayor
Post Office Box 1750
Foley, Alabama 36536

To County:

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

8. **Indemnity and Limitations of Liability:** City/Town accepts the voting machines, 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 voting machines, work, property, product and services of the County or its employees. City/Town assumes the risk of any latent or patent defects or problems that are or may be contained in the voting machines, work, property, product and services of the County. City/Town agrees that the County shall not be liable for any injury, loss or damage on account of any defects or problems or from the services performed by County employees. City/Town for itself and City/Town Representatives waive and release the County from any claims for injury or damages to the City/Town by reason of the condition of the voting machines, work, property, product and services of the County or otherwise.

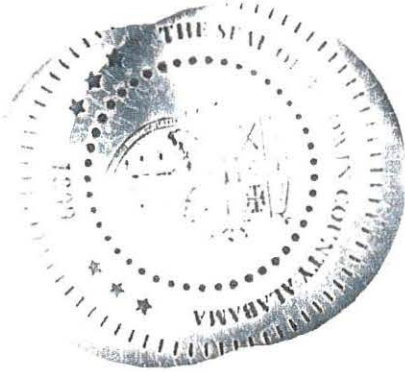
Furthermore, City/Town shall defend, indemnify and hold County harmless from and against all demands, actions and claims of any description whatsoever, for any and all claimed loss, injury or damages incurred by the use of County voting machines and the services of County employees, including, but not 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 indemnity obligations, representations and assurances 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/Town 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/Town or in any way diminish any immunity, absolute or qualified, to which the County and City/Town are otherwise entitled by law.

9. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and City/Town 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.
10. **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/Town have contributed substantially and materially to the preparation of this Agreement.
11. **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.
12. **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.
13. **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 formation, interpretation and available remedies, without regard to Alabama conflict of law principles.
14. **Counterparts:** This Agreement may be executed in one or more counterparts, and all such counterparts shall substitute the same agreement. It shall be necessary to account for only one (1) such counterpart in proving this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below.



County:
BALDWIN COUNTY

James E. Ball

~~JOE DAVIS, III~~ James E. Ball / Date
Chairman

/ 11/2/2021

ATTEST:

Wayne Dyess

WAYNE DYESS
County Administrator

/ 11/2/2021
/ Date

STATE OF ALABAMA)
COUNTY OF BALDWIN)

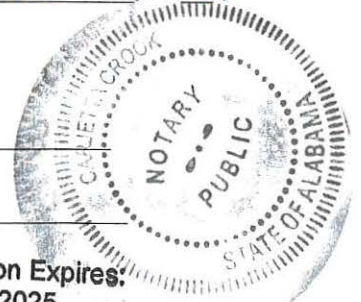
I, Carietta Crook, a Notary Public in and for said County, in said State, hereby certify that JOE DAVIS, III, and WAYNE DYESS, whose names as Chairman and County Administrator of the Baldwin County Commission, respectively, are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they executed the same voluntarily with full authority to do so for and as an act of the Baldwin County Commission.

Given under my hand and official seal this the 2nd day of November, 2021

Carietta Crook

Notary Public

My Commission Expires: _____



My Commission Expires:
July 14, 2025

City/Town of Foley _____ :

[Signature] / 10/18/21
Mayor /Date
Ralph G. Hellmich
Print Name

ATTEST:

Kathryn Taylor / 10-18-2021
City/Town Clerk /Date
Kathryn Taylor MMC, City Clerk
Print Name

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, Brenda W. Shambo, a Notary Public, in and for said County in said State, hereby certify that Ralph G. Hellmich, Mayor, and Kathryn Taylor, City/Town Clerk, whose names as Mayor and City Clerk of City of Foley, 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 voluntarily with full authority to do so for and as an act of the City/Town, Alabama.

Given under my hand and official seal this the 18th day of October, 2021.

Brenda W. Shambo
Notary Public My Commission Expires
My Commission Expires: April 28, 2024

