



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

January 16, 2018

The Honorable Jim Hamby
Mayor
Town of Elberta
Post Office Box 277
Elberta, Alabama 36530

RE: Intergovernmental Service Agreement between Baldwin County and the Town of Elberta for Routine Maintenance of Pilgrim Road in Elberta Town Limits

Dear Mayor Hamby:

The Baldwin County Commission, during its regularly scheduled meeting held on January 16, 2018, approved an *Intergovernmental Service Agreement* between the Commission and the Town of Elberta for Area 300 Maintenance Crews to perform routine blading on the dirt road portion of Pilgrim Road (0.22 miles) that lies within Elberta town limits for a period of twenty-four (24) months. The Town of Elberta will be billed quarterly for the actual cost of the work performed.

This *Agreement* shall be effective upon full execution and terminate after twenty-four (24) months, unless terminated by either party upon the delivery of a thirty (30) day notice of termination.

Enclosed is a **fully executed copy** of the *Agreement* 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, Vice Chairman
Baldwin County Commission

CFG/met Item BG1

cc: Joey Nunnally
Audra Mize
Lisa Sangster

ENCLOSURE

INTERGOVERNMENTAL SERVICE AGREEMENT

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

RECITALS

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

Whereas, County and Town 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 Town 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 Town acknowledge and agree that the road listed below, as identified and depicted on *Exhibit A* hereto, is situated inside the present incorporated municipal limits of Town, and is a road over which Town is responsible for and over which Town exercises control; and

Whereas, the Town has requested that the County assist the Town in its efforts to maintain the dirt road portion (0.22 miles) of Pilgrim Road inside Elberta Town Limits, and the County agrees to perform routine blading, pursuant to the terms and conditions herein; and

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

Whereas, County and Town now wish to enter into this Agreement to provide for the routine blading of the dirt road portion (0.22 miles) of Pilgrim Road which is inside the Town's jurisdiction.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, County and 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:** The parties acknowledge and agree that the purpose of this Agreement is to provide for the routine blading of the dirt road portion (0.22 miles) of Pilgrim Road inside the corporate limits of the Town.
3. **Town Remains Owner of Right-of-Way:** The Town, at all times, including during the effective term of this Agreement and beyond, shall retain exclusive responsibility for and control over Pilgrim Road specifically identified and depicted on *Exhibit A* hereto. The County, however, obtains no rights, responsibilities or control for the subject right-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. **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.
5. **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.
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 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 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 Agreement has been approved by the Parties.
9. **Services to be Performed by County:**
 - A. Perform routine blading of the dirt road portion (0.22 miles) of Pilgrim Road when the County performs routine blading on the County's portion of Pilgrim Road.
 - B. Remit quarterly invoices to the Town for actual costs incurred.
Note: County cannot sell bid item materials to the Town.
10. **Services to be Performed by Town (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 labor costs incurred by the County.
 - E. Provide any materials necessary for the work.
11. **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 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 Town: Town of Elberta
13052 Main Street
Elberta, AL 36530

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

12. **Indemnity:** Town 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 Town as to, and has no obligation for the condition of the improvements, work, property, product and services of the County. Town 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 Town. Town agrees that the County shall not be liable for any injury, loss or damage on account of any defects or problems. Town for itself and Town 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, Town 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 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 Town or in any way diminish any immunity, absolute or qualified, to which the County and Town are otherwise entitled by law.

13. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and 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.
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 Town 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.

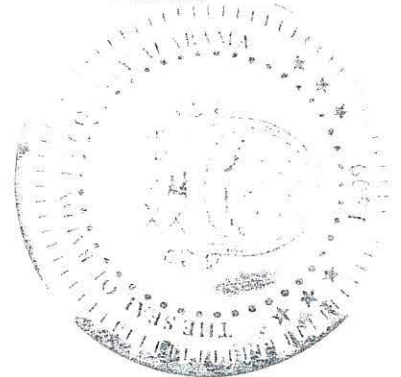
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below.

COUNTY:
BALDWIN COUNTY

Frank Burt, Jr. / DATE
FRANK BURT, JR. / DATE
CHAIRMAN

ATTEST:

Ronald J. Cink / DATE
RONALD J. CINK / DATE
COUNTY ADMINISTRATOR



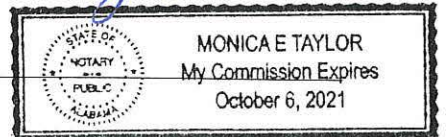
STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, Monica E. Taylor, a Notary Public in and for said County, in said State, hereby certify that FRANK BURT, JR., and RONALD J. CINK, 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 16th day of January, 2018.

Monica E. Taylor
Notary Public

My Commission Expires:



TOWN:
THE TOWN OF ELBERTA

Jim Hamby 1-11-18
Mayor Jim Hamby /Date

ATTEST:

Ann Suter 1-11-18
Town Clerk /Date

STATE OF ALABAMA
COUNTY OF BALDWIN

I, Victoria Klein, a Notary Public, in and for said County in said State, hereby certify that JIM HAMBY, and Lisa Salter, whose names as Mayor and Town Clerk of TOWN OF ELBERTA, 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 Town of Elberta, Alabama.

Given under my hand and official seal this the 11th day of January, 2018.

Victoria Klein
Notary Public

My Commission Expires: September 13, 2021