

AGREEMENT

BETWEEN

Baldwin County Commission

AND

THE STATE OF ALABAMA

RELATIVE TO

A PASS THROUGH OF FEDERAL FUNDS

FOR

**AN URBANIZED AREA PUBLIC TRANSPORTATION PROJECT FOR THE
Eastern Shore URBANIZED AREA**

IN

Baldwin County

Project No. UPT-319 CDFA No. 20.507

Fiscal Year 2023

AGREEMENT

Between

Baldwin County Commission

And

THE STATE OF ALABAMA

Relative to a Pass Through of Federal Funds for an Urbanized Area Transportation Project providing for General Public Transportation in the Eastern Shore Urbanized Area in Baldwin County.

PART ONE (1): INTRODUCTION

THIS AGREEMENT made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the **STATE**; and, the **Baldwin County Commission**, hereinafter referred to as the **Baldwin County Commission**; in cooperation with the USDOT, Federal Transit Administration, hereinafter referred to as USDOT; and

WHEREAS, a Statewide Transportation Improvement Program has been developed for the Urbanized Areas and certain public transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the **STATE** and the **Baldwin County Commission** to cooperate in implementing public transportation projects; and

WHEREAS, the **STATE** is the designated recipient for certain USDOT capital, operating, and administrative public transportation funds; and

WHEREAS, the **Baldwin County Commission** has been selected to be the local implementing **Baldwin County Commission** (operator) to provide the public transportation service and/or equipment and the management and operation thereof under the terms of this Agreement; and

WHEREAS, the **STATE** and the **Baldwin County Commission** develop annual capital, operating, and administrative award applications, including the documents relating thereto, that are consolidated into a single program of projects and submitted to USDOT, and approved by it.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

PART TWO (2): PROJECT PROVISIONS

- A. Project Description:** The **Baldwin County Commission** will undertake a public transportation project hereinafter referred to as the "project", in **Eastern Shore Urbanized Area in Baldwin County** is the project area of this Agreement, during Fiscal Year 2023. The project will be accomplished or performed by the **Baldwin County Commission** in accordance with this Agreement and the requirements, provisions, terms, and conditions of the award applications, including the documents relating thereto, developed by the **STATE** and **Baldwin County Commission**. These applications, including the documents relating thereto, are on record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. It is understood by the **Baldwin County Commission** that failure to carry out the project in accordance with this Agreement, including the award applications and documents related thereto, may result in the loss of federal funding for the project. This project will commence upon execution of this Agreement and written authorization to proceed from the **STATE**.
- B. Project Funding:** It is expressly understood that federal funds for this project are being provided through the award approved by USDOT as authorized under Section 5307 and/or Section 5339 of the Federal Transit Act Amendments of 1991 and subsequent amendments, as applicable, and the **STATE** will not be liable for any funding. The **Baldwin County Commission** may bill the **STATE** not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with **STATE** law and will indicate the payment that is due, true, correct, and unpaid, and the invoice will be notarized. Final invoice must be received by November 1st following the close of the fiscal year in which the project was completed. The costs allowable are those costs defined in Federal Acquisition Regulations Subpart 31.107 or 31.108 whichever is applicable of the Federal Acquisition Regulations and will include direct and indirect costs to complete the project as shown in the approved award applications and the documents related thereto. It is understood that budget adjustments may be necessary and may be allowed, subject to the prior approval of the **STATE** in writing, in order to successfully carry out the project. However, under no circumstances will the **Baldwin County Commission** be reimbursed for expenditures over and beyond the **STATE** approved amount. The **Baldwin County Commission** must obtain written approval of the **STATE** prior to incurring costs not listed in the approved award application budgets. It is expressly understood that any costs incurred by the **Baldwin County Commission** in administering this project which are determined to be ineligible for reimbursement by the USDOT will be borne by the **Baldwin County Commission** with no liability to the **STATE**.

- C. Regulations:** The **Baldwin County Commission** agrees to become familiar with all state and federal laws, rules, regulations and procedures applicable to this Agreement. The **STATE**, upon request, will furnish to the **Baldwin County Commission** a copy of any and all such applicable state and federal laws, rules, regulations and procedures.
- D. Purchase of Project Capital Equipment:** The purchase of project equipment financed in whole or in part pursuant to this Agreement will be in accordance with applicable state and federal laws, rules regulations and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity. No purchase of vehicles or project equipment shall be made by the **Baldwin County Commission** without the written consent of the **STATE**. The **STATE** will solicit bids and make awards for vehicles purchased pursuant to this Agreement and the **Baldwin County Commission** will transmit to the **STATE**, a certified check payable to the Alabama Department of Transportation for vehicles or equipment ordered that will be valid when given and presented for payment for any required match or non-federal participating share of the bid price of the project equipment. The check will accompany the order form of the **Baldwin County Commission** for the project equipment. The federal share of the cost of the project will not exceed the amount indicated in the latest approved project budget. It is expressly understood that the entire cost of project vehicles and equipment in excess of the specified federal share will be borne by the **Baldwin County Commission** with no liability to the **STATE** or USDOT. The **Baldwin County Commission** recognizes and acknowledges that the **STATE** provides federal funding for this project keeping with the provisions of this Agreement, and that the **STATE** is responsible for protection of such funds so paid or invested. In order to secure federal funding paid and invested by the **STATE**, the **Baldwin County Commission** does hereby grant and convey to the State of Alabama a lien on and against any and all vehicles and equipment purchased under this Agreement in an amount equal to any and all funds paid by the **STATE** from Federal funding, toward the respective purchase of any and all vehicles and equipment under this Agreement.
- E. Non-Expendable Purchases:** The purchase of all nonexpendable items over three thousand dollars (\$3,000.00) must be requested in advance by the **Baldwin County Commission**, and approved in writing by the **STATE** to be eligible for reimbursement.
- F. Lease of Project Vehicles:** Any Agreement made by the **Baldwin County Commission** for lease of a vehicle or vehicles will be subject to written approval of the **STATE**. When vehicles are leased from a private enterprise, the lease will contain a provision for applying a portion of the lease cost toward the purchase price in the event the vehicles are purchased at a later date. All vehicle leases will be subject to applicable bidding requirements of Federal and State of Alabama law.
- G. Insurance:** The **Baldwin County Commission** will have insurance coverage adequate to protect the project vehicles, facilities, and equipment. In addition, the **Baldwin County**

Commission will have adequate public liability insurance coverage with limits for bodily injury not less than \$100,000.00 to any one person and not less than \$300,000.00 for any one accident and property damage of not less than \$50,000.00, which insurance will be in effect at all times during performance of this project. Documentation acceptable to the **STATE**, that the above-required insurance has been secured will be submitted to the **STATE**. Proof of insurance must also be provided to the **STATE** by the **Baldwin County Commission** prior to removal by the **Baldwin County Commission** of the vehicle from **STATE** property. All insurance shall be by companies authorized to do business in Alabama. **Baldwin County Commission** shall also carry Workmen's Compensation coverage. The **Baldwin County Commission** will comply with any and all insurance requirements, which are imposed or required by the Alabama Public Service Commission in keeping with its authority, and such requirements as are imposed by the laws of the **STATE** of Alabama.

- H. **Open Door Policy/Use of Equipment:** Project vehicles will be available to the public at all times for public use. All project equipment and facilities must be used for providing public transportation service within the project area described in this Agreement, including the approved award applications and related documents, for the duration of the project. During such period, any project equipment is not used in this manner or is withdrawn from public transportation service, the **Baldwin County Commission** will immediately notify the **STATE** and the project equipment will be disposed of by the **STATE** or reassigned in accordance with federal regulations and as directed by the **STATE**. The provisions of this Agreement and the provisions of Title 49 Code of Federal Regulations Part 18, "Uniform Administrative Requirements for Awards and Cooperative Agreements to State and Local Governments," will govern all project property utilization and disposition. During the period of use of project equipment under this Agreement, the **Baldwin County Commission** will maintain the project equipment and facilities at a high level of cleanliness, safety, and mechanical soundness. The **STATE** and the USDOT will have the right to conduct periodic inspections of project facilities, equipment, and project areas and premises for the purpose of confirming proper maintenance pursuant to these regulations.
- I. **Licensing:** The **Baldwin County Commission**, in providing services under this Agreement, will comply with all state licensing standards and any other standard provisions applicable to this Agreement or which might be applicable to its operations under this Agreement.
- J. **Motor Vehicle Safety Standards:** The motor vehicles utilized or used in the performance of this project will comply with the Motor Vehicle Safety Standards as established by the USDOT.
- K. **Contracts Under This Agreement:** The **Baldwin County Commission** will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party.

with respect to its rights and responsibilities under this Agreement, without the prior written concurrence of the **STATE**.

- L. Audit and Inspection:** The **Baldwin County Commission** will permit the **STATE**, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives access, to inspect, at any time, any and all vehicles, facilities and equipment utilized or used in performance of the project; records of all transportation services rendered by the **Baldwin County Commission** in the use of such vehicles, facilities and equipment; and any and all data and records which in any way relate to the project or to the accomplishment of the project. The **Baldwin County Commission** will also permit the entities listed above to audit the records and accounts of the **Baldwin County Commission** pertaining to the project at any and all times, and the **Baldwin County Commission** will give its full cooperation to the **STATE**. Furthermore, the responsibility for auditing certain public entities, agencies and organizations is vested in the Department of Examiners of Public Accounts under the Laws of the State of Alabama. If the **Baldwin County Commission** is not subject to audit by the Department of Examiners of Public Accounts, the **Baldwin County Commission** does hereby agree that the **STATE** may, solely at the discretion of the **STATE**, request an audit of the **Baldwin County Commission** by the Department of Examiners of Public Accounts or another auditor at the further discretion of the **STATE**, and that the **Baldwin County Commission** will fully cooperate with said audit. The **Baldwin County Commission** will ensure that the External Audit Manager of the ALDOT is forwarded a copy of the audit within nine (9) months from of the end of the fiscal year in which the audit was conducted. Failure to do so may result in the suspension of payment to the **Baldwin County Commission**.
- M. Audit Requirements:** The **Baldwin County Commission** will comply with all audit requirements set forth in the Uniform Guidance "Super Circular" published by the Office of Management and Budget at 2 CFR Part 200 Chapter I, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and attachment "Financial Statement Submittal Policy of ALDOT for Local Transportation Agencies". USDOT incorporated these changes at 2 CFR part 1201, which deviates from part 200 only with respect to standard application requirements, equipment, procurements by States, and financial reporting. In addition, for any audit submitted, the **Baldwin County Commission** should submit to the External Audit Manager of the ALDOT, along with its annual audit report, a letter from its CPA setting out audit findings, whether material or immaterial, noted in this report. If there were no findings other than those noted in the audit report the CPA should issue a letter stating such. Furthermore, the **Baldwin County Commission** will maintain on file, within its office, a letter from its CPA stating the results of its peer review, whether favorable or unfavorable, as required by Government Auditing Standards (also known as the "Yellow Book"). As required by Legislative Act # 94-414, the Examiners of Public Accounts shall be the repository of audit reports for entities receiving public funds. The

Baldwin County Commission shall provide a copy of its audit to the Examiners of Public Accounts when completed.

N. Equipment Management: The **Baldwin County Commission** will comply with the management standards specified in the "Uniform Administrative Requirements for Awards and Cooperative Agreements to State and Local Governments"(49 CFR Part 18.32) in the control, use, and disposition of equipment acquired under this award. Equipment management will also include the following:

1. Maintain equipment records that include a description of the equipment; a serial or other identification number; the source of the equipment; the acquisition date and cost of the equipment; percentage of federal and local participation in the cost of the equipment; the location, use, and condition of the equipment; repairs and maintenance to the equipment; and the ultimate disposition data including the date of disposal and sale price.
2. An annual physical inventory to validate the inventory with records described in the preceding paragraph.
3. Develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.
4. Develop and follow procedures to keep the equipment maintained and in good condition. As a minimum, the **Baldwin County Commission** shall follow the vehicle maintenance schedule recommended by the manufacturer, showing the date the maintenance was performed. Maintenance records shall be provided to the **STATE** upon request.
5. When original or replacement equipment acquired under an award is no longer needed for the original project or program or for other activities currently or previously supported by a federal or state agency, the **Baldwin County Commission** shall contact the **STATE** to request authority to dispose of the equipment, and the **STATE** shall issue disposition instructions.

O. Records and Reports:

1. **Establishment and Maintenance of Accounting Records.** The **Baldwin County Commission** will establish and maintain, in accordance with requirements established by the **STATE**, separate accounts for the project, either independently or separately within its existing system, to be known as the Project Account. The cost accounting system must be adequate and acceptable to the **STATE** as determined by the Alabama Department of Transportation's External Audit Manager.
2. **Documentation of Project Cost.** All charges to the Project Account will be supported by properly executed invoices, contracts, or vouchers, as applicable,

evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the **STATE**.

3. **Checks, Orders and Vouchers.** All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.
4. **Reports.** The **Baldwin County Commission** will report to the **STATE** the progress of the project in such a manner as the **STATE** may require. The **Baldwin County Commission** will also submit to the **STATE**, at the beginning of each fiscal year, certification in form and detail acceptable to the **STATE**, that the project equipment is still being used in accordance with the terms of this Agreement. The **Baldwin County Commission** will also provide to the **STATE** any information requested by the **STATE** regarding the project.
5. **Financial Statements.** The **Baldwin County Commission** will submit to the **STATE**, at such time as the **STATE** may require, such financial statements, data, records, contracts and other documents related to the project as may be requested by the **STATE**.
6. **Right of Access to Records.** The **STATE** will have full access to and right to examine all project records at all times, and all records of any nature which in any manner relate to the project or to this Agreement in any way.
7. **Retention of Records.** The **Baldwin County Commission** will retain all books, records, and other documents relative to this Agreement for three (3) years after project termination or close out or as otherwise required, and the **STATE**, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during this period.

PART THREE (3): GENERAL PROVISIONS

- A. Baldwin County Commission to Indemnify:** To the fullest extent permitted by law, the **Baldwin County Commission** shall defend, indemnify, and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, employees in both their official and individual capacities, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of any work, provision of any services or expenditure of funds required, authorized or undertaken pursuant to the terms of this Agreement, or any damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, caused or as a result of in whole or in part by the deliberate, intentional, wanton, reckless, fraudulent or negligent acts or omissions, or the deliberate, intentional, wanton, reckless, fraudulent or negligent misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement or by negligent acts or omissions of the **Baldwin County Commission**, anyone directly or indirectly employed by the **Baldwin County Commission** or anyone for whose acts **Baldwin County Commission** may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or alleged but not legally established to have been caused in whole by a party indemnified hereunder.

The term "hold harmless" includes the obligation of the **Baldwin County Commission** to pay damages on behalf of the State of Alabama, the Alabama Department of Transportation, and its agents, servants, and/or employees.

- B. Permission to Start Work:** The **Baldwin County Commission** will not proceed with the project work until the **STATE** gives written authorization for the **Baldwin County Commission** to proceed.
- C. Termination:** In the event the **Baldwin County Commission** fails at any time, in any manner, to comply with any provision, requirement, term or condition of this Agreement, such failure will constitute a default by the **Baldwin County Commission** under this Agreement. Any such default or defaults not corrected by the **Baldwin County Commission** within thirty (30) days following receipt of written notice from the **STATE** by certified or registered mail of such default or defaults, will be deemed a breach by the **Baldwin County Commission** of this Agreement, and the **STATE** may terminate this Agreement. A waiver by the **STATE** of a default or defaults by the **Baldwin County Commission** will not constitute a waiver of subsequent default or defaults by the **Baldwin County Commission**. In addition, if the award from USDOT is terminated by USDOT, the **STATE** will have the right to terminate this Agreement by giving ten (10) days written notice of termination. This notice will be mailed by certified or registered mail. Unless otherwise terminated as herein provided, this Agreement will terminate on September 30,

2023 or upon expenditure of all funds provided in the approved project funding, whichever occurs first.

- D. Performance:** The **Baldwin County Commission** will commence, carry on, and complete the project with all practicable dispatch, in a sound, economical, and efficient manner.
- E. Participation by Disadvantaged Business Enterprises in Federal-aid Programs:** Policy. It is the policy of the U. S. Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement. DBE obligation. The recipient of funds under the terms of this Agreement agrees to ensure the Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard such recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts. Failure of the recipient of funds under the terms of this Agreement, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this Agreement shall constitute a breach of contract, and may result in termination of the contract by the **STATE**, or such other remedy may be undertaken by the **STATE** as it deems appropriate.
- F. Equal Employment Opportunity:** The **Baldwin County Commission** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or physical or mental disability. The **Baldwin County Commission** will take affirmative action to insure that employee applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions will include, but not be limited to the following: employment; upgrading; demotion; transfer; recruitment; layoff and termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Furthermore, the **STATE** and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any and all **Baldwin County Commission** materials for the purpose of monitoring the **Baldwin County Commission's** compliance with the provisions of this section.
- G. Civil Rights:** During the performance of this AGREEMENT, the **Baldwin County Commission** for itself, its assignees and successors in interest, agrees as follows:
- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42

U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. § 5332, the **Baldwin County Commission** agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or physical or mental disability. In addition, the **Baldwin County Commission** agrees to comply with applicable Federal implementing regulations and other implementing requirement FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Religion, National Origin, Sex, Age or Physical or Mental Disability - In accordance with Title VII of the Civil Rights Act, as amended 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the **Baldwin County Commission** agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The **Baldwin County Commission** agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the **Baldwin County Commission** agrees to comply with any implementing requirements FTA may issue.
- (b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the **Baldwin County Commission** agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the **Baldwin County Commission** agrees to comply with any implementing requirements FTA may issue.
- (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the **Baldwin County Commission** agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the **Baldwin County Commission** agrees to comply with any implementing requirements FTA may issue.

(3) The **Baldwin County Commission** also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA,

modified only if necessary to identify the affected parties. The **Baldwin County Commission** will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Statues 252), the regulations of USDOT issued hereunder (Code of Federal Regulations, Title 49, Subtitle A, Part 21), and the assurance by the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any and all **Baldwin County Commission** materials which will permit them to monitor the **Baldwin County Commission** for compliance with the provisions of this section.

- H. **Americans with Disabilities Act:** The **Baldwin County Commission** will comply with all requirements of The Americans with Disabilities Act of 1990 (ADA) which mandates equal opportunity in employment, transportation, telecommunications, and places of public accommodation for individuals with disabilities.
- I. **Prohibited Interest:** No member, officer, or employee of the **Baldwin County Commission** during his tenure or for two (2) years thereafter will have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- J. **Project Administration:** The **Baldwin County Commission** will abide by, conform to, and comply with all provisions of Title 49 Code of Federal Regulations Part 18, "Uniform Administrative Requirement for Awards and Cooperative Agreements to State and Local Governments," in performance of this contract.
- K. **Disputes with Private Enterprise Providers of Transportation:** The **Baldwin County Commission** will establish a process by which private providers may have disputes or conflicts arising out of the performance of this project properly heard and settled. This process will be submitted to the **STATE** within thirty (30) days from the notice to proceed with the project.
- L. **Labor Protection Provision:** The **Baldwin County Commission** will be financially responsible for the application of the terms and conditions of Warranty Section 49 U.S.C. 5333(b) Arrangements (also known as Special Section 13(c) Warranty) of the Federal Transit Act Amendments of 1991 and subsequent legislation, which Act is herewith incorporated by reference, **Attachment B** and the **Baldwin County Commission** as a recipient does hereby accept and will comply with and meet the terms and conditions of the "Nonunion Protective Arrangement Pursuant to Section 5333(B) of Title 49 of the U.S. Code" dated October 17, 2014, as such terms and conditions are applicable to the **Baldwin County Commission** as recipient, which Warranty Section 49 U.S.C. 5333(b) Nonunion Protective Arrangement is attached hereto, as a part hereof, as **Attachment A**. The **STATE** assumes no obligations under, or with respect to terms and conditions of the Special Section 49 U.S.C. 5333(b) Warranty for Application to the Small Urban and Rural Program which are not otherwise part of its normal obligations as an award administrator. In addition to the above labor protection provisions, in the event the **Baldwin County Commission** receives Section 5339 funding, the **Baldwin County Commission** will be

deemed to be and will be party to and will be bound by the terms and conditions of the “Nonunion Protective Arrangement Pursuant to Section 5333(B) of Title 49 of the U.S. Code”, executed by the Director of the Alabama Department of Transportation.

- M. Charter Provisions:** Charter services provided by the **Baldwin County Commission** will be in compliance with USDOT charter regulations and must have prior written approval of the **STATE**.
- N. School Bus Provisions:** The **Baldwin County Commission** will not engage in exclusive school bus operations, nor will the **Baldwin County Commission** engage in the transportation of students and school personnel in competition with private school bus operators. All school bus service will be in compliance with Alabama Department of Transportation written school bus policy issued June 30, 1987, including amendments thereto, which written policy is of record in the Alabama Department of Transportation and is hereby made a part hereof by reference.
- O. Dispute Resolution:** When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.
- P. Buy America:** The **Baldwin County Commission** will comply with all applicable Buy America Requirements as referenced in Section 1048 of the Federal Transit Act Amendments of 1991 and subsequent legislation.
- Q. Other Applicable Regulations:** The **Baldwin County Commission** will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 United States Code 1857(h)], Section 508 of the Clean Water Act (33 United States Code 1368), Executive Order 11738, Environmental Protection **Baldwin County Commission** regulations (40 Code of Federal Regulations 15). Further, the **Baldwin County Commission** will comply with all provisions of the current Federal Transit Administration’s Master Agreement and subsequent Agreements or amendments applicable during the period of this Agreement.
- R. Restrictions on Lobbying:** The prospective participant/recipient, by causing the execution of and the submission of this Federal contract, award, loan, cooperative Agreement, or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:
 - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress

in connection with the awarding of any Federal contract, the making of any Federal award, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, loan, or cooperative Agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal **Baldwin County Commission**, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, award, loan, or cooperative Agreement, or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The prospective participant/recipient also agrees by submitting this Federal contract, award, loan, cooperative Agreement or other instrument as might be applicable under Section 1352, Title 31 U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, and that all such subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- S. Out-of-State Travel:** All out-of-state travel (travel outside Alabama) costs under this project must be requested in advance by the **Baldwin County Commission** on the correct state travel request form, and approved in writing by the **STATE** to be eligible for reimbursement.
- T. In-State Travel:** All in-state travel costs incurred under this project will be subject to the per diem policies of the **STATE** of Alabama. These policies are revised periodically and thusly will reflect revised per diem rates periodically.
- U. Subcontractors:** The **Baldwin County Commission** will not enter into any subcontract which utilizes USDOT funded equipment without prior written consent of the **STATE** and will include in all subcontractors entered into pursuant to this Agreement all of the above clauses as required by the **STATE**.
- V. Agreement Change:** The terms of this Agreement may be modified by Supplemental Agreement duly executed by the parties hereto.
- W. Drug-Free Workplace Act of 1988:** The **Baldwin County Commission** assures the **STATE** that it publishes a statement notifying employees of the policies in support of a

drug-free workplace; and establishes an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The **Baldwin County Commission's** policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation, and employee assistance programs, and
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

- X. Privacy Act:** The **Baldwin County Commission** shall comply with the Privacy Act of 1974 (5 U.S.C. Section 552a) and the rules and regulations issued pursuant to the Act when the performance of this Agreement involves activities associated with maintaining a system of records on individuals to be operated by the **Baldwin County Commission**, its contractors or employees to accomplish a Government function. The **Baldwin County Commission** shall include this Privacy Act notification in every approved subcontract for the same purpose.
- Y. Program Fraud and False of Fraudulent Statements and Related Acts:** The **Baldwin County Commission** acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the **Baldwin County Commission** the penalties of 18 U.S.C. § 1001, 31 U.S.C. §§ 3801 et seq., and 49 U.S.C. § 5307 (n)(1), as the Federal Government may deem appropriate. The terms of U.S. D.O.T. regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to this project.
- Z. Suspension And Debarment:** The terms of the U.S. DOT regulation, "Suspension and Debarment of Participants in DOT Financial Assistance Programs," set forth in Executive Order 12549 and implemented by 49 CFR Part 29, are applicable to this award Agreement. Furthermore, any contractor employed by the **Baldwin County Commission** is also bound by the terms of 49 CFR Part 29 and must complete a Lower Tier Participant Certification. The **Baldwin County Commission** warrants the debarment certification furnished as part of the application is current and valid.
- AA. Liquidated Damages Provision:** The **Baldwin County Commission** may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day or overrun in contract time; and the rate must be specific in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

BB. Funds Shall Not Be Constituted As A Debt: It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this Agreement, be enacted, then the conflicting provision in the Agreement shall be deemed null and void.

CC. Termination Due To Insufficient Funds

1. If the Agreement term is to exceed more than one fiscal year, then said Agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the Agreement in subsequent fiscal years.
2. In the event of proration of the fund from which payment under this Agreement is to be made, Agreement will be subject to termination.

DD. Federal Changes: The **Baldwin County Commission** shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The **Baldwin County Commission's** failure to comply shall constitute a material breach of this contract.

EE. No Federal Government Obligations to Third Parties by Use of a Disclaimer:

1. The **Baldwin County Commission** acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The **Baldwin County Commission** agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

FF. Incorporation of Federal Transit Administration (FTA) Terms: All contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **Baldwin County Commission** shall not perform any act, fail to perform any act, or refuse to comply with any **STATE** or Federal requests which would cause the **STATE** to be in violation of the FTA Terms and Conditions.

- GG.** By entering into this Agreement, the **Baldwin County Commission** is not an agent of the **STATE**, its officers, employees, agents or assigns. The **Baldwin County Commission** is an independent entity from the **STATE** and nothing in this Agreement creates an agency relationship between the parties.
- HH.** By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- II.** In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by those officers and officials duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

Baldwin County Commission

By:_____

By:_____

Title: Interim County Administrator, Ronald J. Cink

Title: Chairman, James E. Ball

This Agreement has been legally reviewed and approved as to form and content

William F. Patty
Chief Counsel
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

Bradley B. Lindsey, P.E.
State Local Transportation Engineer

Edward N. Austin, P.E.
Chief Engineer
Alabama Department of Transportation

**State of Alabama, acting by
and through the Alabama
Department of Transportation**

**The foregoing Agreement is hereby
executed in the name of the State of
Alabama and signed by the Governor on
the ____ day of _____, 20____.**

John R. Cooper
Transportation Director

Kay Ivey
Governor, State of Alabama

ATTACHMENT:
**Financial Statement Submittal Policy of ALDOT For Local
Transportation Agencies**

January 7, 2020

Subject: Financial Statement Submittal Requirements

The following is the submittal requirements for the financial statement requirements for local transportation agencies receiving federal funds.

- A single audit is required for agencies that expends \$750,000* or more of federal funds during its fiscal year. This amount is set forth in the Office of Management and Budget (OMB) in 2 CFR Chapter I, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- A financial statement audit is required for agencies that expends more than \$250,000 but less than \$750,000* of federal funds.
- Agencies that have expended less than \$250,000 of federal funds can submit either a compilation or self-prepared financial statements. However, ALDOT reserves the right to require an audit by an independent CPA if deemed necessary.

Note *: The \$750,000 amount is the threshold amount established by 2 CFR Chapter I, Chapter II, Part 200. If this amount is changed by the OMB, the revised amount will be applicable.

ATTACHMENT A

NONUNION PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(B) OF TITLE 49 OF THE U.S. CODE *October 17, 2014*

The term "Grantee" refers to the applicant for assistance; a "Recipient" as used herein, shall refer to any entity receiving transportation assistance under the grant. A Recipient may also act as the Grantee. The term "project" shall be deemed to cover and refer to the activities funded under the grant.

These protective arrangements are intended for the benefit of transit employees in the service area of the project, who are considered as third-party beneficiaries to the employee protective arrangements incorporated by reference in the grant contract between the U.S. Department of Transportation and the Grantee, and the parties to the contract so signify by executing that contract. Transit employees are also third-party beneficiaries to the protective arrangements incorporated in subsequent contracts of assistance, pursuant to the Department's certification, between the Grantee and any Recipient. Employees may assert claims through their representative with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

(1) The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project. The "service area" as used herein, includes the geographic area over which the project is operated and the area whose population is served by the project, including adjacent areas affected by the project;

(2) All rights, privileges, and benefits (including collective bargaining rights and pension rights and benefits) of employees (including employees already retired) shall be preserved and continued. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer;

(3) The Recipient shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project;

(4) In the event an employee is terminated or laid off as a result of the project, he shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or

retraining is required by such employment or reemployment, the Recipient shall provide or provide for such training or retraining at no cost to the employee;

(5) Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971.² An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used herein shall include events occurring in anticipation of, during, and subsequent to the project;

(6) In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the Recipient, the employees and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions;

(7) The Recipient agrees that any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of these terms and conditions which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be submitted at the written request of any party to the dispute to the Secretary of Labor who may appoint a staff member to serve as arbitrator and render a final and binding determination or may direct the parties to proceed to arbitration administered by the Federal Mediation and Conciliation Service, or a comparable private sector neutral arbitration organization. The arbitrator's grant will be final and binding.

In the event of any dispute as to whether or not a particular employee was affected by the project, it shall be the employee's obligation to identify the project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the project affected the employee. The claiming employee shall prevail if it is established that the project had an effect upon the employee even if other factors may also have affected the employee (Hodgson's Affidavit in Civil Action No. 825-71)³;

(8) The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph;

(9) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient is a recipient of Federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C. § 5333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees.

Last Updated: 10-30-14

² See Appendix C-1 http://www.dol.gov/olms/regs/compliance/transit/9_AppendixC1.pdf.

³ http://www.dol.gov/olms/regs/compliance/transit/10_Hodgson_Affadavit.pdf

ATTACHMENT B

Warranty Section 5333(b) Arrangements (also known as Special Section 13(c) Warranty) For Application to the Small Urban And Rural Program

The **Alabama Department of Transportation** shall ensure, as a precondition to the receipt of assistance, that the **Baldwin County Commission** agree that the following terms and conditions shall apply for the protection of employees in the mass passenger transportation industry in the service area of the project:

1. The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project. The "service area" as used herein, includes the geographic area over which the project is operated and the area whose population is served by the project, including adjacent areas affected by the project;
2. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued;
3. The **Baldwin County Commission** shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project;
4. In the event an employee is terminated or laid off as a result of the project, he shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the **Baldwin County Commission** shall provide or provide for such training or retraining at no cost to the employee;
5. Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement, known as C-1, certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971 (See

Appendix C-1, a copy of which is included on the Department's website.)

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used herein shall include events occurring in anticipation of, during, and subsequent to the project;

6. In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the **Baldwin County Commission**, the employees and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair, and equitable employee protective arrangements which shall be incorporated in these conditions;
7. The **Baldwin County Commission** agrees that any controversy respecting the project's effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.

In the event of any dispute as to whether or not a particular employee was affected by the project, it shall be the employee's obligation to identify the project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the **Baldwin County Commission** to prove that factors other than the project affected the employee. The claiming employee shall prevail if it is established that the project had an effect upon the employee even if other factors may also have affected the employee (See Hodgson's Affidavit in Civil Action No. 825-71)

8. The **Baldwin County Commission** shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph;
9. The **Baldwin County Commission** will post, in a prominent and accessible place, a notice stating that the **Baldwin County Commission** is a recipient of Federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees; and

10. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the Grantee/Applicant, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

* * *