

INTERGOVERNMENTAL SERVICE AGREEMENT

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

RECITALS

Whereas, the 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, the County is the administrator of the Eastern Shore Metropolitan Planning Organization (MPO), the organization designated by the Governor of the State of Alabama as being responsible, together with the State of Alabama, for implementing the applicable provisions of 23 USC 134 and 135 (amended by the FAST Act, Sections 1201 and 1202, December 2015); 42 USC 2000d-1, 7401; 23 CFR 450 and 500; 40 CFR 51 and 93; and

Whereas, the Town is an MPO member government; and

Whereas, the Baldwin Regional Area Transit System (BRATS) is the designated public transit provider for the MPO; and

Whereas, the Federal Transit Administration (FTA) allocates 5307 funds to the MPO for public transit capital and operation needs within the MPO urbanized area; and

Whereas, on July 22, 2020, the MPO adopted and approved Resolution 2020-11 amending the FY 2020-2023 Transportation Improvement Program (TIP) allocating \$782,635 in federal funds for a Loxley Transit Shelter in the Town (hereinafter “Project”); and

Whereas, the Town has agreed to contribute \$195,658 for the 20% local match; and

Whereas, as the designated public transit provider for the MPO, BRATS is the grantee for all 5307 grant applications and oversees the use of those funds; and

Whereas, the Town desires to manage the Project and coordinate directly with the Alabama Department of Transportation (ALDOT) throughout the duration of the Project; and

Whereas, the County and Town agree that such an arrangement is in the best interests of both parties and the citizens of Baldwin County; and

Whereas, ALDOT has concurred with the Town’s request to manage the project subject to formal documentation of the arrangements between the County and Town; and

Whereas, County and Town now wish to enter into this Agreement to provide for their joint cooperation in the Town’s management of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, the 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. **Independent Entities:** By entering into this Agreement, the Town is not an agent of the County, its officers, employees, agents or assigns. The Town is an independent entity from the County, and nothing in this Agreement creates an agency relationship between the parties.
3. **Purpose:** The parties acknowledge and agree that the purpose of this Agreement is for the Town to manage the Loxley Transit Shelter project by coordinating all aspects of the project with ALDOT, the MPO, and the County; request reimbursement from ALDOT through the County; and provide monitoring and reporting for all required federal clauses and regulations associated with the project, including but not limited to all requirements set forth in the ALDOT Policy and Procedure Manual for Federal Transit Administration Transportation Programs 5307, 5309, 5310 and 5311.
4. **Project Contacts:** Each party hereby designates the individual set forth below as its respective Project Contact. Project Contacts will assist with Project coordination and will be each party's prime contact person. Notices, reports, and other correspondence will be sent to the attention of each party's Project Manager by electronic mail or U.S. mail, whichever is most appropriate, to the parties' addresses as set forth below.

- Project Contact for the County:

Sarah Hart Sislak
shart@baldwincountyal.gov
Eastern Shore MPO
Fairhope Satellite Courthouse
1100 Fairhope Avenue
Fairhope, AL 36532

- Project Contact for the Town:

Robert Davis
rdavis@townofloxey.org
Town of Loxley
PO Box 9
Loxley, AL 36551

Any changes to the above representatives or addresses must immediately be provided to the other party in writing.

5. **County to Lease Transit Shelter at No Cost:** The Town shall lease the Transit Shelter to the County for the duration required by the Federal Transit Administration; the grant; and all applicable laws, rules, and regulations at no cost to the County, and such lease shall incorporate all terms of the present Agreement and all other terms and conditions deemed necessary or required by County.
6. **Submittal of Invoices:** The Town will pay all costs related to the project and submit an invoice to the County for the eighty-percent (80%) federal portion. Invoices must provide a detailed description of reimbursable expenses and shall be provided in the format requested by County and with all necessary support documentation requested by the County. The County will submit the invoice and support documents to ALDOT. Upon receiving reimbursement from ALDOT, the County will remit the invoice amount to the Town.

Invoices will be submitted by the Town to the County at the following address:

Sarah Hart Sislak
shart@baldwincountyal.gov
Eastern Shore MPO
Fairhope Satellite Courthouse
1100 Fairhope Avenue
Fairhope, AL 36532

Invoices may be submitted to Baldwin County on a monthly basis with not more than one invoice per month. A final invoice must be submitted by Town no later than three months following the date of acceptance of the completed project by ALDOT.

7. **Maintenance:** The Town, at all times, including during the effective term of this Agreement and at all times thereafter, shall retain exclusive maintenance responsibilities for the Loxley Transit Shelter.
8. **No Joint Ownership of Property:** The parties acknowledge and agree that they will not jointly acquire, own, or otherwise come into joint or common ownership of any property as a result of or in relation to this Agreement.

9. **Reimbursement Limited:** The reimbursement to be paid to the Town shall be limited to eligible Project expenses in accordance with applicable ALDOT and FTA procurement guidelines for transit projects. Any non-eligible project expense or non-reimbursable expenses incurred by the Town will not be reimbursed and will be born solely by the Town.
10. **Town Qualifications:** The Town certifies that is it qualified to manage the project in conformity with all applicable State and federal regulations and has completed that attached Subrecipient Questionnaire as evidence of this fact (see Attachment A).
11. **Financing and Budgeting:** The Town shall be responsible for financing the obligations undertaken by it in relation to the Project and County shall not be responsible for financing, or in any other manner contributing to, the actual costs or expenses of the obligations undertaken by the Town unless expressly identified herein. In the event of any chargebacks or the required repayment of grant proceeds pursuant to an audit or otherwise, the Town shall be responsible for such chargeback or repayment.
12. **Project Records and Documents:** The Town, upon request, will provide to the County for examination or audit all Project related records and documents during or following completion of the Project. The Town will maintain all such records and documents for at least three (3) years following completion of the Project.
13. **Law Compliance:** The Town will abide by and assist the County in satisfying all applicable federal, state and local laws, rules, regulations and guidelines, related to performance under this Agreement. The Town shall procure all applicable federal, state and local permits and pay all said fees.
14. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
15. **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.
16. **Services to be Performed by County:**
 - A. BRATS and MPO staff shall provide stakeholder input to the Town on an as-needed basis.
 - B. Upon receipt of an invoice and all required support documentation from the Town, the County shall, within 45 days, submit a request for reimbursement from ALDOT.
 - C. Upon receipt of reimbursement from ALDOT, the County shall, within 45 days

remit to Town the invoiced reimbursement amount.

17. **Services to be Performed by Town:**

- A. Provide all project management related to the Project including all necessary coordination with ALDOT, selecting and managing consultants, letting to bid, and managing construction in accordance with the applicable State and federal requirements.
- B. Provide preliminary engineering and survey work required for the Project.
- C. Acquire all right-of-way necessary to complete the project.
- D. Provide any and all material testing and all construction engineering and inspection (CE&I).
- E. Handle coordination and any costs associated with utility relocations.
- F. Acquisition, monitoring and reporting for all required permits (including ADEM) and any associated costs.
- G. Submit all invoices and required support documentation to County for reimbursement.
- H. Take all necessary action to maintain completed Project in accordance with applicable State and federal requirements.
- I. Provide all monitoring and reporting for all required federal clauses and regulations and any associated costs.

*Any tasks necessary for the completion of Project not specifically delineated in Section 10 as a responsibility of County shall be the responsibility of Town.

18. **Adoption of ALDOT and FTA Procurement Procedures:** The Town hereby adopts the ALDOT procurement procedures, as approved by the Federal Transit Administration, for any procurement related to the Project (see Attachment B).

19. **Adoption of BRATS Title VI Plan, LEP Plan, and DBE Policy:** The Town hereby adopts the BRATS Title VI and DBE plans as approved by the Federal Transit Administration, as amended from time to time (see Attachment C).

20. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement in its sole discretion upon written notice to the Town. 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 Town. In the event of termination by the County, the Town shall be responsible for all actual costs incurred by the County (less donated County time and services) through the date of receipt of the requisite termination notice.

All notices provided for herein shall be sent as follows:

To Town: Town of Loxley
 PO Box 9
 Loxley, AL 36551

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

Indemnity: To the fullest extent allowed by law, Town 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 manner related to the work or services performed by the County or Town pursuant to this Agreement or the Town’s failure to comply federal, state or local law. This indemnification provision shall survive the expiration or termination of this Agreement.

The Town 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 Town as to, and has no obligation for the condition of, the improvements, work, property, product, funds and services of the County. The Town 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 Town. The Town agrees that the County shall not be liable for any injury, loss or damage on account of any such defects or problems. The Town for itself and Town 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, assurances, without limitation, contained within this Agreement shall survive and exist beyond the date of termination or expiration of this Agreement, and time, or the lapse thereof, shall not be used for, or argued as a defense by, the 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 related to any immunity, absolute or qualified, to which the County and Town are otherwise entitled by law.

21. **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.
22. **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.
23. **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.
24. **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.
25. **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: _____
JOE DAVIS, III Date
Chairman

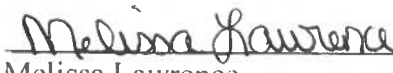
WAYNE DYESS Date
County Administrator

TOWN:
THE TOWN OF LOXLEY

ATTEST:

BY: 
Richard Teal
Mayor

Date

 5-19-21
Melissa Lawrence
Town Clerk

Date

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Joe Davis, III, as Chairman of the Baldwin County Commission, and Wayne Dyess, as County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal, this the _____ day of _____, 2021.

Notary Public
My Commission Expires: _____

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, Richard Teal, whose name as Mayor of the Town of Loxley, and Melissa Lawrence, whose name as Town Clerk of the Town of Loxley, 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 Town of Loxley.

Given under my hand and official seal, this the 19 day of May, 2021.




Notary Public
My Commission Expires: _____

ROBYNE A. CLOWER
NOTARY PUBLIC, ALABAMA STATE AT LARGE
MY COMMISSION EXPIRES APR. 30, 2022