

**AGREEMENT
FOR
ADMINISTERING U.S. DEPARTMENT OF TRANSPORTATION
FINANCIAL ASSISTANCE FOR TRANSPORTATION PLANNING
BETWEEN
THE STATE OF ALABAMA
AND THE
BALDWIN COUNTY COMMISSION**

PART ONE (1): INTRODUCTION

This agreement is made and entered into by and between the State of Alabama, acting through the Alabama Department of Transportation, hereinafter referred to as STATE; and the Baldwin County Commission, hereinafter referred to as COMMISSION; in cooperation with the Federal Transit Administration, hereinafter referred to as FTA; and the Federal Highway Administration, hereinafter referred to as FHWA; and

WHEREAS, 23 U.S.C. 134 and 49 U.S.C. 5303 require that each urbanized area have a comprehensive, cooperative, continuing transportation planning process (commonly referred to as the “3-C” Process); and

WHEREAS, 23 U.S.C. 104 (f) and 49 U.S.C. 5303 authorize certain funds (commonly referred to as FHWA Planning funds and FTA 5303 Planning funds respectively) to be made available to designated transportation planning agencies for supporting the “3-C” Process; and

WHEREAS, the COMMISSION has been selected by principal elected officials as the designated transportation planning agency for the Eastern Shore urbanized area; and

WHEREAS, the STATE receives funds from FHWA and FTA, which include FHWA Planning Funds and FTA 5303 Planning funds to be made available to the COMMISSION for Transportation Planning for the Eastern Shore urbanized area; and

WHEREAS, the STATE receives funds from FHWA and FTA to be made available to the COMMISSION for project design, construction, utility work and the purchase of right-of-way for the Eastern Shore urbanized area; and

WHEREAS, the STATE and the COMMISSION desire to cooperate in the Agreement for administering U.S. Department of Transportation Financial Assistance for Transportation Planning; and

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): FUNDING PROVISIONS

Funding: Funding for this agreement is subject to availability of Federal Aid funds at the time of authorization. The STATE will not be liable for Federal Aid funds in any amount.

A. It is further understood that this is a cost reimbursement program and no Federal

funds will be provided to the COMMISSION prior to accomplishment of the work for which it is requested. Furthermore, no Federal funds will be reimbursed for work performed prior to authorization.

- B. Any Planning funds provided to the COMMISSION under this agreement will be used for transportation planning related activities and will be in accordance with the most current approved Unified Planning Work Program (UPWP).
- C. Any cost incurred by the COMMISSION relating to the UPWP that is determined to be ineligible for reimbursement by FHWA, or in excess of the limits previously stated, will not be an eligible cost and will be borne and paid by the COMMISSION.
- D. It is understood that the work is to be done on an actual cost basis. Payment will not exceed the total estimated funds budgeted in the most current approved UPWP.
- E. A Metropolitan Planning Organization's (MPO) UPWP may include funds carried over from prior fiscal years. If the MPO carries more funding from the year immediately prior than what is determined to be available after the final invoice, the MPO should amend the current UPWP to reduce the amount of carryover.
- F. All costs for work performed under the terms of this agreement will be financed, when eligible for federal participation, with FHWA Planning and/or FTA 5303 Planning funds and matching funds.
- G. The COMMISSION agrees that in the event the FHWA or FTA determines, due to rules and/or regulations of FHWA or FTA, that federal funds must be refunded, the COMMISSION will reimburse and pay to the STATE a sum of money equal to the total amount of federal funds to be refunded to FHWA or FTA.
- H. **Time Limit:** Charges may be made to the Unified Planning Work Program upon written authorization to proceed from FHWA directed to the COMMISSION.
- I. Any eligible costs incurred by the COMMISSION on or after October 1, 2021, will be reimbursable under this agreement.

PART THREE (3): PROJECT SERVICES

- A. The COMMISSION and STATE are responsible for cooperatively developing financial plans that support the 3C Process. The Long-Range Transportation Plan (LRTP) shall be fiscally constrained pursuant to 23 CFR 450.324. Inflation rates shall reflect year-of-expenditure dollars. To support the development of the LRTP, the State shall provide the COMMISSION with a long-range forecast of expected State and Federal transportation revenues for the Metropolitan Planning Area. The State will also provide the COMMISSION with a listing of projects for which ALDOT has committed the aforementioned revenue. The MPO will, in turn, provide a LRTP that meets the requirements of 23 CFR 450.324.
- B. The Transportation Improvement Program (TIP) shall be fiscally constrained pursuant to 23 CFR 450.326. Inflation rates shall reflect year-of-expenditure dollars. To support the development of the TIP, the State shall provide a list of planned projects. This list may be provided using ALDOT's Comprehensive

Project Management System (CPMS), therefore requiring the COMMISSION to access and print the list of planned projects. The MPO will, in turn, provide a TIP that meets the requirements of 23 CFR 450.326.

- C. Within 90 days after the close of the Federal fiscal year, the State, Public Transportation Provider(s), and the COMMISSION shall cooperatively develop a listing of projects for which funds under 23 USC or 49 USC Chapter 53 were obligated in the preceding program year. This Annual Listing of Obligated Projects shall include all Federally funded projects authorized in the preceding program year, including all project phases. Each phase shall, at a minimum, include TIP project description, project reference ID, project sponsor, and other items requested by ALDOT. The Annual Listing of Obligated Projects will also identify, for each phase, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining required to complete the entire project. The COMMISSION shall publish the Annual Listing of Obligated Projects in accordance with the MPO's Public Participation Plan.
- D. All work performed pursuant to this agreement will be completed to the satisfaction of the STATE within the time frame established by the most current approved Unified Planning Work Program.
- E. The use of planning funds by the COMMISSION for out-of-state travel must be approved by the STATE two weeks prior to the travel date. No approval will be required for in-state travel. The COMMISSION in Alabama will operate according to the General Services Administration (GSA) Rate for both in-state and out-of-state travel. The cost to stay at a hotel that is hosting the event will be reimbursable, even if above the GSA Rate. Other exemptions will be reviewed on a case by case basis. Required invoice documentation will be as follows:
 - 1. Meals & Incidentals – no documentation required;
 - 2. Mileage – map showing travel route;
 - 3. Air Travel – receipt required;
 - 4. Hotel – receipt required if more than GSA Rate;
 - 5. Registration – receipt required
- F. The purchase of all equipment financed in whole or in part pursuant to this agreement will be in accordance with STATE and Federal procedures, including normal STATE competitive bidding procedures, where appropriate. All purchases over Fifteen Hundred Dollars (\$1,500.00) must be approved by the STATE, in advance, in writing, to be eligible for reimbursement, unless it is detailed in the current UPWP and final cost is within 20% of the cost specified in that UPWP. All purchases over Five Thousand Dollars (\$5,000) must be approved by the FHWA, in advance, in writing, to be eligible for reimbursement, unless it is detailed in the current UPWP and final cost is within 20% of the cost specified in that UPWP.
- G. The COMMISSION must maintain a detailed inventory of equipment with a current per-unit fair-market value in excess of \$5,000, in accordance with 2 CFR 200.33, 2 CFR 200.94, 2 CFR 200.313, 2 CFR 200.439, and other related articles. This inventory must include any equipment financed in whole or in part with

FHWA Planning funds and FTA 5303 Planning funds. A copy of this inventory must be updated every two years and should remain on file with the COMMISSION.

- H. Any documents or other printed material produced under this agreement will be submitted to the STATE for proofreading and technical editing prior to their publication for final printing. A sufficient number of copies of such documents or other printed material will be published.
- I. The COMMISSION will submit to the STATE, at such time as the STATE may require, such progress reports, financial statements, data, records, contracts, and other documents as may be deemed necessary by the STATE.
- J. The use of any planning funds provided herein in accordance with the most current approved STATE consultant selection procedures.
- K. The COMMISSION will perform or have performed all services required to fulfill the purposes of this agreement.

PART FOUR (4): CONTRACT PROVISIONS

- A. The COMMISSION will not assign any portion of their work to be performed under this agreement, or execute any contract, amendment or change order hereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this agreement without prior written authorization of the STATE. Any subcontract under this agreement must include all required and/or applicable causes of this agreement.
- B. If the COMMISSION fails to fulfill in a timely and proper manner its obligations as stipulated in this agreement, or if the funds from FHWA and/or FTA under which this agreement is made are terminated by FHWA or FTA, or if any party to this agreement is unable to participate in the funding of costs as set forth herein, the STATE will have the right to terminate this contract by giving thirty days prior written notice to the COMMISSION of such termination and specifying the effective date thereof. Said notice will stipulate the reasons for termination and will be mailed by certified mail. If the COMMISSION is unable or unwilling to comply with such additional conditions as may be lawfully imposed by the STATE or FHWA or FTA on the grant or agreement under which the COMMISSION is performing, the COMMISSION will have the right to terminate the agreement by giving thirty days prior written notice to the STATE specifying the effective date thereof. Said notice shall stipulate the reasons for termination and will be mailed by certified mail. If termination necessitates disposal of property, all property will be disposed strictly in accordance with all STATE and Federal procedures. The COMMISSION will be entitled to compensation for any unreimbursed eligible expenses incurred.
- C. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the COMMISSION and the STATE, or otherwise arising between the parties to this agreement, will be referred to the Director of the State Department of Transportation and the Chairman of the local Metropolitan Planning Organization for a negotiated settlement.

- D. The COMMISSION will be responsible at all times for the work it performs under this Agreement and especially the COMMISSION will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees, in both their official and individual capacities, and agents of each, from and against any and all claims, actions, damages, loss, liabilities, including attorney's fees and expenses whatsoever or any amount paid in compromise thereof arising out of or in connection with its performance of the work under this Agreement and this project and from and against these at any time arising out of or in connection with the performed work and project.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The COMMISSION will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. The COMMISSION may not invoice the STATE more frequently than once per month. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Local Transportation Bureau for payment. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized.
- B. The COMMISSION should submit a final invoice, as well as an Annual Report, for the work performed under a Unified Planning Work Program. Both documents should be received on or before the 3rd Monday in November.
- C. The COMMISSION will not assign any portion of their 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 prior written authorization of the STATE.
- D. The COMMISSION will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE. The COMMISSION must furnish to the STATE a copy of their approved indirect cost allocation plan two weeks prior to the submission of the first invoice.
- E. All charges 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. 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.
- F. The COMMISSION will report to the STATE the progress of the work performed under the UPWP in such manner as the STATE may require. The COMMISSION will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect as may be requested by the STATE. The COMMISSION invoice submission should include the following:
1. Cover Letter showing, at a minimum, the requested dollar amount, time period, and project number;

2. Form F-25 or other form used by the ALDOT Finance Bureau;
 3. Recap Sheet showing, at a minimum, the total funds earned, the Federal funds earned, and the local match;
 4. Detailed information concerning salaries, fringe benefits, and indirect expenses;
 5. Detailed information concerning other charges;
 6. Summary report showing amount expended to-date as compared with the current UPWP. This page should be itemized by task or sub-task;
 7. Supplemental documentation for out-of-state trips to include the approval letter from the State (and FHWA if applicable) as well as the request letter and documentation submitted to the State;
 8. Supplemental documentation for in-state trips to include an expense report showing dates, destination, reason for trip, and GSA rate;
 9. Supplemental documentation for items over \$1,500 to include the approval letter from the State (and FHWA if applicable) as well as the request letter and documentation submitted to the State. Applicable pages from the approved Unified Planning Work Program may be substituted if no approval letter is required (see Part 3, Item F);
 10. Supplemental documentation for advertisements to include a copy or screenshot of the advertisement;
 11. Supplemental documentation for contract work to include a scope-of-work for the project;
 12. Supplemental documentation for membership dues to include the name and purpose of the organization for which membership is being requested;
 13. A list of other expenses in summarized form (i.e. postage, copies and printing, local travel, office supplies, meeting supplies, food for meetings)
- G. The 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, to inspect, at any time, vehicles and equipment utilized or used in performance of the UPWP and any and all data and records which in any way relate to the UPWP or to the accomplishment of the UPWP. The COMMISSION will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the COMMISSION will give its full cooperation to those persons or their authorized representatives, as applicable.
- H. The COMMISSION will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.
- I. The COMMISSION will retain all books, records, and other documents relative to this Agreement for a minimum of five (5) years after project termination, expiration of Federal interest, or close out, 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 the right to examine any of said materials at all reasonable times during said period.

- J. A Single Audit will be performed on a yearly basis, in accordance with requirements of 2 CFR Part 200 and the Rules of the Department of Examiners of Public Accounts, for all non-Federal entities that expend more than \$750,000 during their fiscal year. The COMMISSION will submit to the Federal Audit Clearinghouse (FAC) the data form and reporting package described in 2 CFR 200.512(d). The COMMISSION must submit to ALDOT a copy of any management letters issued by an auditor. The COMMISSION will keep one copy of the above-mentioned data collection form and reporting package on file for three years from the date of submission to the FAC.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the COMMISSION is not an agent of the STATE, its officers, employees, agents, or assigns. The COMMISSION is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. 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.
- C. No member, officer, or employee of the STATE or of a local public body during his tenure or one year thereafter will have any interest, direct or indirect, in this contract or the proceeds thereof.
- D. No member of, or delegate to the Congress of the United States, will be allowed to any share or part of this contract or to any benefit arising therefrom.
- E. The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. The agreement for administering FHWA Planning funds and FTA 5303 Planning funds between the COMMISSION and the STATE executed on the **28th day of September 2012** is hereby made null and void.
- H. Nothing will be construed under the terms of this agreement by the STATE or the COMMISSION that will cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- I. Exhibits A, E, H, M, and N are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons 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:

By: _____
County Administrator (Signature)

By: _____
Chairman, Baldwin County Commission

Print Name of County Administrator

Print Name of Chairman

(AFFIX SEAL)

This agreement has been legally reviewed and approved as to form and content.

By: _____
William F. Patty
Chief Counsel

RECOMMENDED FOR APPROVAL:

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

Edward N. Austin, P. E.
Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20_____.

KAY IVEY
GOVERNOR, STATE OF ALABAMA