

AGREEMENT

FOR

ADMINISTERING U.S. DEPARTMENT OF TRANSPORTATION

FINANCIAL ASSISTANCE FOR TRANSPORTATION PLANNING

BETWEEN

THE STATE OF ALABAMA

AND THE

BALDWIN COUNTY COMMISSION, ALABAMA

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

This Agreement 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, Alabama, hereinafter referred to as COMMISSION; in cooperation with the U.S. Department of Transportation, the Federal Highway Administration, hereinafter referred to as FHWA, and the Federal Transit Administration, hereinafter referred to as FTA; 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) be made available to designated transportation planning agencies for supporting the “3-C” Process; and

WHEREAS, the COMMISSION has been selected by the Eastern Shore Metropolitan Planning Organization 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.

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

- (1) The planning funds referred to herein will be FHWA Planning funds and FTA 5303 Planning funds that pass through the STATE to the COMMISSION.
- (2) 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.
- (3) All costs for work performed under terms of this Agreement will be financed, when eligible for Federal participation, with Federal FHWA Planning and/or FTA 5303 Planning funds and matching funds provided by the COMMISSION. No STATE funds will be used to finance work performed under terms of this Agreement.
- (4) 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 Unified Planning Work Program.
- (5) Any costs for work not eligible for Federal participation will be financed 100 percent by the COMMISSION.
- (6) 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.

- (7) Any eligible costs incurred by the COMMISSION on or after October 1, 2012, will be reimbursable under this Agreement.
- (8) 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.
- (9) The COMMISSION will be responsible for having an adequate accounting system, and the COMMISSION must furnish to the STATE a copy of their approved cost allocation plan and indirect cost rate. The STATE will be charged with the responsibility of determining whether or not the COMMISSION has an adequate accounting system. Such determination will be documented prior to payment of the first invoice.
- (10) The COMMISSION may invoice the STATE not more frequently than monthly on forms furnished by the STATE for work performed under this Agreement. The COMMISSION's final invoice for this Agreement must be received on or before December 31 of each year.
- (11) The COMMISSION will abide by 49 CFR 18.26, and all provisions of OMB Circulars A-133, with respect to audit requirements, and 2 CFR 225, with respect to cost principles and all attachments thereto, currently in force in performing work under the terms of this Agreement.
- (12) The use of planning funds by the COMMISSION for out-of-state travel must be approved by the STATE two (2) weeks prior to the travel date.
- (13) 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 related to the project as may be deemed necessary by the STATE.

- (14) The COMMISSION will permit the STATE, the Comptroller General of the United States, and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect all relevant project data and records. The COMMISSION will also permit the above-named persons to audit the books, records, and accounts of the COMMISSION pertaining to the project as defined herein. The COMMISSION will retain intact, for three (3) years following Federal Project closeout, all Project documents, and financial records and supporting documents. An audit will be performed on a yearly basis, in accordance with requirements of OMB Circular A-133. For Regional Planning Commissions, these audits may be done by a local CPA firm, if permission is obtained in writing from the Examiners of Public Accounts. The COMMISSION will furnish a copy of the audit report to the Examiner of Public Accounts and two copies to the STATE. In addition, the COMMISSION should submit along with their report a letter from their CPA setting out audit findings, whether material or immaterial that was not noted in their report. If there were no instances or findings other than those noted in the audit report, the CPA should issue a letter stating such. Furthermore, the COMMISSION needs to maintain on file, within their office, a letter from their CPA stating the results of their peer review, whether favorable or unfavorable, as required by Government Auditing Standards (also known as the “Yellow Book”).
- (15) The use of any planning funds provided herein for consultant services will be in

accordance with the most current approved STATE consultant selection procedures.

- (16) The COMMISSION will perform or have performed all services required to fulfill the purposes of this Agreement.
- (17) 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. Any subcontract under this Agreement must include all required and/or applicable clauses and provisions of this Agreement.
- (18) 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 (30) 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 (30) 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.

- (19) 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 Metropolitan Planning Organization for a negotiated settlement.
- (20) 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, as mutually determined by the COMMISSION and the STATE, will be published.
- (21) The purchase of all project 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 nonexpendable purchases over fifteen hundred dollars (\$1,500.00) must be approved by the STATE in advance, in writing, to be eligible for reimbursement. The COMMISSION must maintain a detailed inventory of equipment, financed in whole or in part with project funds, FHWA Planning funds and FTA 5303 Planning funds. A copy of this inventory must accompany the final invoice each year.

- (22) The COMMISSION will be responsible at all times for all of the work performed under this Agreement and, the COMMISSION will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement. 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.
- (23) 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 there from.
- (24) No member, officer, or employee of the STATE or of a local public body during his tenure or one (1) year thereafter will have any interest, direct or indirect, in this contract or the proceeds thereof.
- (25) In connection with the execution of this Agreement, the COMMISSION will not discriminate against any employee or applicant for employment because of age, disability, race, religion, color, sex, or national origin. The COMMISSION will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, or national origin. Such actions will include, but not 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. Furthermore, the STATE and the Secretary of the United States Department of Transportation, or their authorized representatives, will have full access to, and right to examine any materials available which will permit them to monitor the COMMISSION for compliance with the provisions of this section.

- (26) The COMMISSION will support 49 CFR, Part 26, Disadvantaged Business Enterprises (DBE), and its objectives as specified below:
- a. Ensure nondiscrimination in the award and administration and DOT- assisted contracts in the Department's highway, transit and airport financial assistance programs;
 - b. Create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
 - c. Ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
 - d. Ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
 - e. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
 - f. Assist the development of firms that can compete successfully in the marketplace outside the DBE program;
 - g. Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs;
 - h. The Alabama Department of Transportation has submitted to the U.S.

Department of Transportation a Disadvantaged Business Enterprises Program.

The recipient of funds under the terms of this Agreement agrees to either comply with the Department's DBE Plan or will prepare and submit for approval a DBE Plan meeting the requirements of 49 CFR, Part 26, prior to performance of any work under this Agreement; and

- i. 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 will 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.

- (27) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (28) The Agreement for administering FHWA Planning funds and FTA 5303 Planning funds between the COMMISSION and the STATE executed on the N/A is hereby made null and void.
- (29) 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 (7/24th Law).

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

ATTEST:

[Signature]
County Clerk (Signature)

BAULD A. E. SPENCER
Type name of Clerk

BALDWIN COUNTY COMMISSION,
ALABAMA

BY: [Signature]
Chairman, Baldwin County Commission
(Signature) ROBERT E. JAMES

APPROVED AS TO FORM:

BY: [Signature]
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

[Signature]
Multimodal Transportation Engineer,
Robert J. Jilla

[Signature]
Acting Chief Engineer, G. M. Harper

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

[Signature]
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this 28th day of September, 2012.

[Signature]
GOVERNOR OF ALABAMA, ROBERT BENTLEY

RESOLUTION 2012-101

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

WHEREAS, the Baldwin County Commission has been selected as the designated transportation planning agency for the Eastern Shore Urbanized Area; and

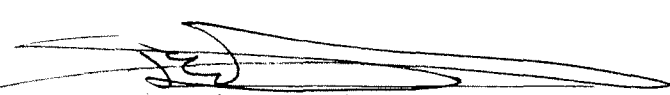
WHEREAS, the State of Alabama receives funds from the Federal Highway Administration and the Federal Transit Administration which include FHWA Planning funds and FTA 5303 Planning funds to be made available to the designated agency for transportation planning for the Eastern Shore Urbanized Area.

NOW, THEREFORE, be it resolved by the Baldwin County Commission of Alabama, that the Chairman be authorized to execute, and the County Clerk be authorized to attest, an agreement with the State of Alabama for administering U.S. Department of Transportation Financial Assistance for Transportation Planning.

ATTESTED:


County Clerk
DAVID A. E. BREWER

APPROVED:


Chairman, Baldwin County
Commission, Alabama
ROBERT E. JAMES

DATE:

August 21, 2012

