# ALABAMA DEPARTMENT OF TRANSPORTATION

**Bureau of County Transportation**

1409 Coliseum Blvd., Montgomery, Alabama 36110-2060
Phone: (334) 242-6207 FAX: (334) 353-6530
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*Robert Bentley*
*Governor*

*John R. Cooper*
*Transportation Director*


November 24, 2014

Chair of County Commission
Baldwin County Commission
Silverhill, Alabama

RE: ERPR-8980 ( )
BCP 02-200-012
Baldwin County

Dear Chair of County Commission:

We are attaching a copy of the executed Agreement between the Alabama Department of Transportation and Baldwin County covering the financing of construction costs for the above project. In accordance with the Alabama Department of Transportation policy, only a machine copy is being furnished. If, for any reason in the future, you need a copy with original signatures, we will furnish you a certified copy of this Agreement.

This executed copy of the Agreement is for your information and file.

Sincerely,

D. E. Phillips, Jr., P.E.
State County Transportation Engineer

DEP:MBH:kb
Attachment
cc: Mr. Clay McBrien (Original Agreement)
Mr. Bill Flowers (Ms. Tamiko Jordan)
Mr. Jimmie L. Gray
Mr. Cal Markert
Mr. Vince Calametti
File

K-15-0263

# AGREEMENT - ERPR

This Agreement is made and entered into by and between the STATE OF ALABAMA, acting by and through the ALABAMA DEPARTMENT OF TRANSPORTATION, party of the first part (hereinafter called the STATE), and, BALDWIN COUNTY, ALABAMA (FEIN [redacted], party of the second part (hereinafter called the COUNTY):

## WITNESSETH

**WHEREAS**, the State and County desire to cooperate in the permanent restoration for a washout of fill at a CD 8X8 culvert and scour at the intlet and oulet on CR-33 south of Comalander Road. FHWA Disaster #AL 14-1 (Report #BALD-40). Project #ERPR-8980( ), BCP 02-200-012, CPMS Reference #100063168.

**NOW THEREFORE**, it is mutually agreed between the STATE and COUNTY as follows;

A. The COUNTY will furnish all Right-of-Way for project without cost to the STATE or this Project.

B. The COUNTY will adjust and/or relocate all Utilities on the project without cost to the STATE or this Project.

C. The COUNTY will make the survey, complete the plans and furnish all preliminary engineering for the project with County forces, or with a consultant selected by the COUNTY and approved by the STATE, as part of the project cost. The plans will be subject to the approval of the STATE and the project will be constructed in accordance with the plans approved by the State and the terms of this Agreement.

D. The COUNTY will furnish all construction engineering for the project with County forces or with a consultant selected by the STATE or with State forces as a part of the project cost.

E. The STATE or a consultant approved by the State will furnish the necessary inspection and testing of materials when needed as part of the cost of the project.

F. If necessary, the COUNTY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the STATE or this project. The COUNTY will be the permittee of record with ADEM for the permit. The contractor shall be a co-permittee with the COUNTY for the permit, and shall comply with all requirements of the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the STATE will have no obligation regarding the permit. The COUNTY will furnish the STATE (Division) a copy of the permit prior to any work being performed by the contractor.

G. 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. All estimated cost will be financed, when eligible for Federal participation, on the basis of 80% Federal Emergency Relief funds and 20% COUNTY funds. Any cost not eligible for Federal reimbursement will be financed 100% by the COUNTY.

H. The estimated cost of construction of this project payable by the parties is the amount set forth below and shall be based on actual quantities and properly supported documentation:

| | |
|---|---|
| Federal Emergency Relief Funds | $ 4,224.00 |
| County Funds | 1,056.00 |
| Total (Incl. E & I) | $ 5,280.00 |

I. The COUNTY will perform all construction for the project with County forces as a part of the project cost.

J. The COUNTY will submit reimbursement invoices for work performed under the terms of this Agreement to the Alabama Department of Transportation within six (6) months after the completion and acceptance of the project. Any invoices submitted after this six (6) month period will not be eligible for payment.

K. The County has complied or will comply with the current regulations and requirements of the State and FHWA and the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that alignment and grades on this project meet, as a minimum, the standards that existed at the site(s) prior to the disaster.

L. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the COUNTY, for any audit performed on this project in accordance with Act No. 94-414.

M. Upon completion and acceptance of this project, the COUNTY will maintain the project in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.

N. The COUNTY will be responsible at all times for all of the work performed under this agreement and, the COUNTY 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.

O. The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.

P. By entering into this agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.

Q. Exhibit M is attached hereto as a part hereof.

R. Exhibit N is attached hereto as a part hereof.

S. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice termination.

IN WITNESS WHEREOF, the parties hereto have caused 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 the approval of the Governor of Alabama.

SEAL

ATTEST:

Clerk (Signature)

DAVID A.Z. BREWER

Type Name of Clerk

BALDWIN COUNTY, ALABAMA

BY: _____

(Signature) Chairman
Baldwin County Commission

Charles F Gruber

Type Name of Chairman

RECOMMENDED

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

State County Transportation Engineer
D. E. Phillips, Jr., P.E.

Chief Engineer
Ronald L. Baldwin, P.E.

APPROVED AS TO FORM:

BY: Jim R Ippolito Jr. (CAE)
Chief Counsel, Jim Ippolito, Jr.
Alabama Department of Transportation

John R Cooper
Transportation Director
John R. Cooper

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON THE 25th DAY OF November, 2014.

Robert Bentley
GOVERNOR OF ALABAMA
ROBERT BENTLEY

11/24/14

RESOLUTION NUMBER 2015-031

BE IT RESOLVED, by the County Commission of Baldwin County, Alabama, that the County enter into an agreement with the State of Alabama; acting by and through the Alabama Department of Transportation for:

Permanent restoration for a washout of fill at a CD 8X8 culvert and scour at the intlet and oulet on CR-33 south of Comalander Road. FHWA Disaster #AL 14-1 (Report #BALD-40). Project #ERPR-8980( ), BCP 02-200-012, CPMS Reference #100063168;

which agreement is before this Commission, and that the agreement be executed in the name of the County, by the Chairman of the Commission for and on its behalf and that it be attested by the County Clerk and the seal of the County affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept of record by the County Clerk.

Passed, adopted, and approved this 4th day of NOVEMBER, 20 14.

ATTESTED:

County Clerk

Chairman, County Commission

I, the undersigned qualified and acting clerk of Baldwin County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County Commission of the County named therein, at a regular meeting of such Commission held on the 4th day of NOVEMBER, 20 14, and that such resolution is of record in the Minute Book of the County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this 4th day of NOVEMBER, 20 14.

County Clerk

SEAL

7/18/90

# EXHIBIT M
# CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, 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 any Federal agency, a Member of Congress, 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 grant, 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, grant, 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, 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.

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.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, 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, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

Rev. 06/01/2012

# EXHIBIT N

## 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.

## TERMINATION DUE TO INSUFFICIENT FUNDS:

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.

In the event of proration of the fund from which payment under this Agreement is to be made, Agreement will be subject to termination.

## ADR CLAUSE:

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendation of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

## AMENDED ALABAMA IMMIGRATION LAW:

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.