



# ALABAMA DEPARTMENT OF TRANSPORTATION

## Bureau of County Transportation

1409 Coliseum Blvd., Montgomery, Alabama 36110-2060

Phone: (334) 242-6207 FAX: (334) 353-6530

Internet: <http://www.dot.state.al.us>



Robert Bentley  
Governor

John R. Cooper  
Transportation Director

April 11, 2016

RECEIVED

APR 14 2016

Chair of County Commission  
Baldwin County Commission  
Silverhill, Alabama

BALDWIN COUNTY  
PLANNING DEPARTMENT

RE: ERPR-8980 ( )  
BCP 02-160-14R  
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

Section	Info	Action	File
Administration			
Plan Construction			
Right of Way			
Construction			
Maintenance			
Subdivision			
Parks			
Accounting			

**ERPR-AGREEMENT-ROW**

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 ( ), party of the second part (hereinafter called the COUNTY):

15 MAR 28 AM 10:29

**WITNESSETH**

**WHEREAS**, the STATE and COUNTY desire to cooperate in the right-of-way acquisition for the bridge replacement of BIN 6941 on CR-9 over Polecat Creek. FHWA Disaster # AL 14-1 (report # BALD-12). Project # ERPR-8980 ( ), BCP 02-160-14R, CPMS Ref. #100065377.

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

- A. This Agreement will cover only the right-of-way acquisition phase of the work by STATE and COUNTY forces or by consultant selected by the COUNTY and approved by the STATE.
- B. The right-of-way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred by the COUNTY or STATE as part of the project cost.
- C. 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. The estimated cost and participation by the various parties are as follows:

Federal Emergency Relief Funds	\$ 45, 287.20
County Funds	<u>11, 321.80</u>
Total	\$ 56, 609.00

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, 80% will be financed with Federal Emergency Relief funds, if available; and the COUNTY will be billed for 20% of the overrun and the COUNTY agrees to pay same to the STATE, or in the event the cost is less than the estimate, the COUNTY will receive a refund accordingly from the STATE for its proportional share as above noted.

- D. Any cost for work not eligible for Federal participation will be financed 100 percent by the COUNTY, which payment will be reflected in the final audit.
- E. The COUNTY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this project must be refunded to the FHWA, the COUNTY will reimburse and pay to the STATE a sum of money equal to the amount of Federal funds expended under this Agreement.
- F. The COUNTY, upon notification by the STATE, will provide its share of the estimated matching funds before the STATE will proceed with the right-of-way acquisition.

G. The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.

H. It is clearly understood by both parties that the STATE does not commit any State or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction and construction engineering and inspection of the proposed improvement.

I. A final audit will be made of all project records after completion of the project, and a final financial settlement will be made.

J. 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.

K. The terms of this Agreement may be modified by supplemental Agreement duly executed by the parties hereto.

L. The COUNTY shall be responsible at all times for all of the work performed under this agreement and, as provided in Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

For all claims not subject to Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

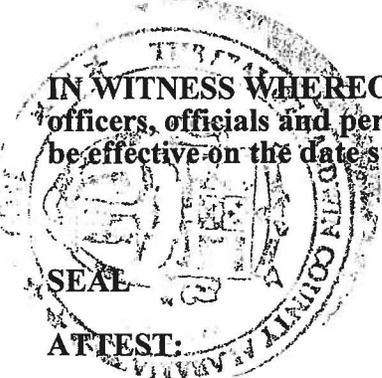
M. The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.

N. 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.

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

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

Q. 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.

ATTEST:

BALDWIN COUNTY, ALABAMA

Ronald J. Cink  
Clerk (Signature)

BY: [Signature]  
(Signature) Chairman  
Baldwin County Commission

Ronald J. Cink  
Type Name of Clerk

Tucker Dorsey  
Type Name of Chairman

RECOMMENDED

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

[Signature]  
State County Transportation Engineer  
D. E. Phillips, Jr., P.E.

[Signature]  
Chief Engineer  
Don T. Arkle, P.E.

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

[Signature]  
Chief Counsel, Jim Ippolito, Jr.  
Alabama Department of Transportation

[Signature]  
Transportation Director  
John R. Cooper

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON THE 11<sup>th</sup> DAY  
OF April, 2016.

Robert Bentley  
GOVERNOR OF ALABAMA  
ROBERT BENTLEY

RESOLUTION NUMBER 2016-063

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

The right-of-way acquisition for the bridge replacement of BIN 6941 on CR-9 over Polecat Creek. FHWA Disaster # AL 14-1 (report # Bald 12). Project # ERPR-8980 ( ), BCP 02-160-14R, CPMS Ref. # 100065377;

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 Administrator 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 Administrator.

Passed, adopted, and approved this 15<sup>th</sup> day of MARCH,  
2016.

ATTESTED:

Roddy CA  
County Administrator

Timmy Day  
Chairman, County Commission

I, the undersigned qualified and acting County Administrator 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

15<sup>th</sup> day of MARCH, 2016, and that such resolution is of record in the records of the County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this

15<sup>th</sup> day of MARCH, 2016.



Roddy CA  
County Administrator

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.**

**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.