ALABAMA DEPARTMENT OF TRANSPORTATION

Bureau of Innovative Programs
1409 Coliseum Boulevard
Administrative Building, Room 110
Montgomery, Alabama 36110
Telephone: 334-353-6232 / Fax: 334-353-6550
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Robert Bentley
Governor

John R. Cooper
Transportation Director

October 27, 2014

RECEIVED
OCT 29 2014
BY: MSK

The Honorable Charles Gruber
Chair, Baldwin County Commission
322 Courthouse Square
Bay Minette, AL 36507

RE: **ACOA59426-ATRP (004)**
BCP 02-090-12
ATRIP 02-03-28
Baldwin County

Dear Chairman Gruber:

Attached is a copy of the executed Agreement between the Alabama Department of Transportation and Baldwin County covering the above project's financing costs for construction.

In compliance with the Alabama Department of Transportation's policy, only a copy of this Agreement is being provided for your information and file. However, if a copy of this Agreement is needed with its original signatures, a certified copy will be made available.

Sincerely,

Edward N. Austin, P.E.
Innovative Programs Engineer

ENA:mk
Attachment(s)
cc: Vince Calametti, P.E. (SW Region Engineer)
Clay McBrien, P.E. (Ms. Melva Bradford)
Lee Reach, P.E. (Area Operations Engineer)
Bill Flowers, Chief Financial Officer (Ms. Tamiko Jordan)
Jimmy L. Gray, External Audits
Cal Markert, P.E. (Baldwin County Engineer)
File

K-15-0112

AGREEMENT
FOR
ALABAMA TRANSPORTATION REHABILITATION AND IMPROVEMENT PROGRAM (ATRIP) PROJECT
BETWEEN THE STATE OF ALABAMA
AND
BALDWIN COUNTY, ALABAMA

This agreement is made and entered into by and between the State of Alabama, (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and Baldwin County [redacted], hereinafter referred to as the COUNTY; in cooperation with the United States Department of Transportation, the Federal Highway Administration, hereinafter referred to as the FHWA:

WITNESSETH

WHEREAS, the STATE and the COUNTY desire to cooperate in the widening and resurfacing on CR-20 from South Hickory Street to SR-59. Length – 0.996 miles
Project# ACOA59426-ATRP (004); BCP# 02-090-12; ATRIP# 02-03-28

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 COUNTY will acquire any additional right-of-way, if needed, for the PROJECT at no cost to the STATE or this PROJECT.

(2) The COUNTY or its representative, if applicable to the PROJECT, agree to adjust and/or relocate all utilities on the PROJECT without cost to the STATE or this PROJECT.

(3) The COUNTY or its representative, will provide the required surveys, complete the plans and perform all other preliminary engineering duties for the PROJECT at no cost to the STATE or this PROJECT. The COUNTY will be responsible for submitting all required environmental documents to the STATE and obtaining approval prior to right-of-way acquisition or submittal of final plan assembly to the STATE. 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.

(4) 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 the PROJECT. 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 or Region) a copy of the permit prior to any work being performed by the contractor.

(5) The COUNTY will furnish all construction engineering for the PROJECT with COUNTY forces or with a consultant selected and approved by the STATE as part of the PROJECT cost. The cost of construction engineering and inspection shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.

(6) The STATE will furnish the necessary inspection and testing of materials with STATE forces when needed as part of the PROJECT cost. The cost of inspection and testing of materials shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.

(7) The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction (latest edition) on the PROJECT and will ensure that alignment and grades on this PROJECT meet the standards of the Alabama Department of Transportation and that the PROJECT will be constructed in accordance with the approved plans.

(8) The PROJECT will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of eighty (80) percent Federal ATRIP funds and twenty (20) percent COUNTY funds, unless otherwise noted below. Any Federal aid non-participating costs shall be borne by the COUNTY at one hundred (100) percent.

(9) Funding for this agreement is subject to the availability of Federal ATRIP funds at the time of authorization. The STATE will not be liable for Federal ATRIP funds in any amount. It is understood that the amounts stated below are estimates only. Any shortfall in funding or overrun in construction costs shall be borne by the COUNTY from Federal ATRIP funds, if available, from COUNTY Federal funds, if available, and from COUNTY funds. In the event of an under-run in construction costs, the amount of Federal ATRIP funds will be the amount stated below, or eighty (80) percent of eligible costs, whichever is less.

(10) The estimated cost of construction of this PROJECT will be provided from the funds outlined as follows:

Federal ATRIP Funds	$ 1,542,568.00
County Funds	$ 385,642.00
Total (Including E & I)	$ 1,928,210.00

(11) The STATE will be responsible for advertisement and receipt of bids, and the award of the contract. Following the receipt of bids and prior to the award of the contract, the STATE will invoice the COUNTY for its prorata share of the estimated cost (if applicable) as reflected by the bid of the successful bidder plus E & I, and the COUNTY will pay this amount to the STATE no later than 30 days after the date bids are opened. Payment must be received prior to award of the contract.

(12) A final audit will be made of all PROJECT records after completion of the PROJECT and a copy will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this agreement.

(13) The COUNTY will submit reimbursement invoices for the work performed under the terms of this agreement to the STATE 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.

(14) Upon completion and acceptance of the work by the STATE, the COUNTY will assume full responsibility for maintenance of that part of the improvements which are not a part of the Alabama Highway Maintenance System. Upon completion and acceptance of the work by the STATE, the COUNTY will maintain the PROJECT in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.

(15) It is agreed that the terms and commitments contained in this agreement 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 or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.

(16) To the extent permitted by law, the COUNTY shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees, in both their official and individual capacities, from and against claims, damages, losses, and expenses, including but not limited to attorneys fees, arising out of or resulting from performance of the work or maintenance of the roadway and/or shoulders by the COUNTY, provision of any services or expenditure of funds required, authorized or undertaken by the COUNTY pursuant to the terms of this agreement, or any damage, loss, expense, bodily injury, or death, or injury to or destruction of tangible property (other than the work itself), including loss of use resulting therefrom, caused in whole or in part by the deliberate, intentional, wanton, reckless, fraudulent or negligent acts of the COUNTY, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its agents, servants or employees, or anyone whose acts the COUNTY may be liable.

(17) 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.

(18) Each party will provide, without cost to the other, information available from its records that will facilitate the performance of the work.

(19) Nothing will be construed under the terms of this agreement by the STATE or the COUNTY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th law).

(20) 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.

(21) Exhibits M and N are attached and hereby made a part of this agreement.

(22) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.

(23) The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.

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

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 the approval of the Governor of Alabama.

SEAL

ATTEST:

Clerk (Signature)

DAVID A.Z. BREWER

Print Name of Clerk

BALDWIN COUNTY, ALABAMA

BY: _____

Chairman (Signature)
Baldwin County Commission

CHARLES F. GRUBER

Print Name of Chairman

RECOMMENDED:

Innovative Programs Engineer
Edward N. Austin, P.E.

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

Chief Engineer
Ronald L. Baldwin, P.E.

APPROVED AS TO FORM:

Chief Counsel
Jim R. Ippolito, Jr.

Transportation Director
John R. Cooper

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON THE 24TH DAY OF October, 2014.

GOVERNOR OF ALABAMA
ROBERT BENTLEY

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 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, 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 sub-recipients shall certify and disclose accordingly.

Rev. 07/18/2012

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 recommendations 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.

RESOLUTION NUMBER 2014-128

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 widening and resurfacing on CR-20 from South Hickory Street to SR-59. Length -0.996 miles Project# ACOA59426-ATRP (004); BCP# 02-090-12; A1RIP# 02-03-28,

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 18th day of September, 2014.

ATTESTED:

County Clerk

Chairman, Baldwin County Commission

I, DAVID A.Z. BRENER 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 18th day of September, 2014, 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 7th day of October, 2014.

County Clerk

SEAL