

STATE OF ALABAMA)
COUNTY OF BALDWIN)

RESOLUTION #2016-047
OF THE
BALDWIN COUNTY COMMISSION

BE IT RESOLVED by the Baldwin County Commission, that the Chairman is hereby authorized, requested and directed to execute for and on behalf of Baldwin County, an agreement by and between the municipalities of Daphne, Fairhope, Spanish Fort, Loxley, County of Baldwin and the State of Alabama entitled “*An Agreement Concerning a Transportation Planning Process for the Eastern Shore Urbanized Area between the County of Baldwin and the Municipalities of Daphne, Fairhope, Spanish Fort, Loxley and the State of Alabama,*” which is attached and made a part hereof.

DONE, under the Seal of the County Commission of Baldwin County, Alabama, on this the 2nd day of February, 2016.



Commissioner J. Tucker Dorsey, Chairman

ATTEST:



Ronald J. Cink, County Administrator



**AN AGREEMENT CONCERNING A
TRANSPORTATION PLANNING PROCESS
FOR THE EASTERN SHORE URBANIZED AREA**

BETWEEN

THE COUNTY OF

BALDWIN

AND

THE MUNICIPALITIES OF DAPHNE, FAIRHOPE, SPANISH FORT,

LOXLEY

AND

THE STATE OF ALABAMA

Sec. 1-1

An Agreement concerning a Metropolitan Transportation Planning Process for the Eastern Shore Urbanized Area between the Baldwin County Commission,

hereinafter referred to as COUNTY;

the municipalities of Daphne, Fairhope, Spanish Fort, and Loxley;

hereinafter referred to as CITIES and TOWN;

and the State of Alabama (acting by and through the Alabama Department of Transportation),

hereinafter referred to as STATE.

Sec. 1-2

- (a) WHEREAS, Section 134 of Title 23 of the United States Code and Chapter 53 of Title 49 of the United States Code requires that each urbanized area, as a condition of the receipt of Federal capital or operating assistance, have a continuing, cooperative and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals that lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods; and
- (b) WHEREAS, the Federal Transit Administration and Federal Highway Administration have issued on December 4, 2015, new regulations concerning the metropolitan transportation planning process.

Sec. 1-3

NOW, THEREFORE, it is hereby agreed as follows:

- (a) The parties to this Agreement resolve to support a continuing, cooperative and comprehensive transportation planning process for the Eastern Shore Urbanized Area, hereinafter referred to as the “3C PROCESS;” and

- (b) FURTHERMORE, it is understood by the parties to this Agreement that an unwillingness to participate in the “3C PROCESS” may result in the Secretary of Transportation refusing to approve Federal Aid funds for surface transportation within the Eastern Shore Urbanized Area.
- (c) IT IS agreed and further understood by the parties of this Agreement that by execution of this Agreement upon and on behalf of the STATE, the Governor designates the following as the Metropolitan Planning Organization (MPO) for the Eastern Shore Urbanized Area:
- (1) The Mayor of each of the municipalities within the transportation planning study area. These municipalities are the following:
 - Mayor, City of Daphne
 - Mayor, City of Fairhope
 - Mayor, City of Spanish Fort;
 - (2) One elected official of the City of Daphne City Council, to be selected by the Mayor (or his designee);
 - (3) One elected official of the City of Fairhope City Council, to be selected by the Mayor (or his designee);
 - (4) One elected official of the Town of Loxley Town Council, to be selected by the Mayor (or his designee);
 - (5) Two Commissioners of the County Commission of the county within the transportation planning study area. The county is:
 - County of Baldwin, District 2
 - County of Baldwin, District 3;
 - (6) Southwest Region Engineer, State of Alabama Department of Transportation;

- (7) Transportation Planning Engineer, State of Alabama Department of Transportation (non-voting); and
- (8) Division Administrator, Federal Highway Administration (non-voting).
- (d) IT IS agreed that any change in the voting membership of the MPO will be at the request of the MPO and with written approval of the Director of the Alabama Department of Transportation. Written approval of the Director of the Alabama Department of Transportation constitutes designation of MPO membership by the Governor of Alabama as required under Federal regulations when this Agreement is signed by the Governor. The MPO may add non-voting members to the MPO, as it deems appropriate.
- (e) IT IS agreed that overall direction of the “3C PROCESS” will be a function of the MPO as identified herein.

Sec. 1-4

- (a) The responsibilities of the MPO will be as follows:
 - (1) Organize and elect a Chairman, Vice-Chairman and establish its rules of procedure and by-laws.
 - (2) Appoint members to the Transportation Technical and Citizens Advisory Committees.
 - (3) Take official action on Transportation Technical and Citizens Advisory Committees’ recommendations and other matters pertaining to furthering the planning process.
 - (4) Set the transportation study area and Federal Aid urban area boundaries.
 - (5) Adopt transportation goals and objectives to guide the Eastern Shore Urbanized Area metropolitan planning process.
 - (6) Annually endorse the Unified Planning Work Program (UPWP) which

documents the transportation-related planning activities to be performed with planning assistance provided under FTA and FHWA Planning funds from Fixing America's Surface Transportation (FAST) Act and other funding sources.

- (7) Review and endorse the Transportation Plan to confirm its validity and its consistency with current transportation and land use conditions as required by the State and Federal regulations.
 - (8) Adopt a Transportation Improvement Program (TIP) that is updated as required by the State and Federal regulations.
 - (9) Adopt and submit plans and recommendations to participating agencies and local governments.
- (b) IT IS further agreed that a representative of the Transportation Technical Advisory Committee, to be appointed by the MPO, will have the following responsibilities:
- (1) Make recommendations to the MPO regarding the documents and materials necessary for the MPO endorsements; and
 - (2) Make recommendations to the MPO regarding the elements of the metropolitan planning process necessary to meet the requirement for certification.
- (c) IT IS further agreed that a representative of the Transportation Citizens Advisory Committee, to be appointed by the MPO, will have the following responsibilities:
- (1) Make recommendations to the MPO regarding the documents and materials necessary for the MPO endorsements; and
 - (2) Make recommendations to the MPO regarding the elements of the metropolitan planning process necessary to meet the requirements for certification.

Sec. 1-5

- (a) IT IS further agreed that the Baldwin County Commission accepts and has the responsibility for the coordination of the "3C PROCESS" and further has the

responsibility to provide the local coordination for all of the member governmental units and agencies as needed to achieve a comprehensive metropolitan planning program.

- (b) IT IS further agreed that the Baldwin County Commission accepts the designation as the recipient of metropolitan planning funds as provided in 23 U.S.C. 104(f) and 49 U.S.C. Chapter 53.
- (c) IT IS further agreed that the Baldwin County Commission will have the following duties and responsibilities:
 - (1) Administration of the study process by the execution of necessary contracts and the provision of financial support necessary for the implementation of the UPWP;
 - (2) Arrange meetings, set agenda and serve as Secretary for the MPO, Transportation Citizens Advisory Committee, and Transportation Technical Advisory Committee;
 - (3) Coordinate the development of the documents and material necessary for the MPO endorsements;
 - (4) Conduct the elements of the metropolitan planning process necessary to meet the requirements for certification; and
 - (5) Coordinate the implementation of the planning tasks outlined in the UPWP.

Sec. 1-6

- (a) IT IS further agreed that the STATE will have the following responsibilities:
 - (1) Dissemination of information and provision of planning assistance regarding metropolitan planning guidelines; and

- (2) Modeling assistance and necessary technical assistance related to the metropolitan planning guidelines.

Sec. 1-7

- (a) IT IS recognized by the parties to this Agreement that the Baldwin County Commission will perform the functions required by the Office of Management and Budget 2, CFR Chapter I, Chapter II, Part 200, et al. (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award).
- (b) IT IS envisioned that the membership of the MPO, as set by this Agreement will work with local planning agencies to ensure coordination of the planning process.
- (c) IT IS agreed that the base data, statistics, and projections developed by the CITIES, TOWN, and COUNTY for comprehensive planning will be available to the MPO planning staff for determining socio-economic and land use data within the Eastern Shore metropolitan study area.

Sec. 1-8

- (a) IT IS agreed that the Agreement executed between the County of Baldwin, the municipalities of Daphne, Fairhope, Spanish Fort, and Loxley, and the State of Alabama acting by and through the Alabama Department of Transportation Planning concerning a planning process for the Eastern Shore Urbanized Area, entered into on October 29, 2012, is hereby terminated and made null and void.
- (b) IT IS agreed that this Agreement may be terminated by any party which provides the remaining parties written notice sixty (60) days in advance of the termination date. Such notice will be provided by registered mail, and the termination date will be determined as that date sixty (60) days from date of delivery.
- (c) IT IS further agreed that this Agreement will remain in full force and effect upon succeeding State Administrations providing a succeeding State Administration does not

advise the COUNTY, CITIES, and TOWN by letter within thirty (30) days after assuming office that this Agreement has been discontinued.

- (d) Nothing shall be construed under the terms of this Agreement by the COUNTY, CITIES, TOWN or the STATE that will cause any conflict with Title 23, Section 15 (1) of the Laws of the State of Alabama (7/24th Law).
- (e) The Baldwin COUNTY Commission shall be responsible at all times for all of the planning 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.

- (f) Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITIES and TOWN shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, their officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorney's fees arising out of, connected with,

resulting from or related to the work performed by the respective CITIES or TOWN, or their officers, employees, contracts, agents or assigns; (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITIES or TOWN, respectively, pursuant to the terms of this Agreement; or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorney's fees, caused by the negligent, careless or unskillful acts of the CITIES or TOWN, respectively, their agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITIES or TOWN, respectively, their agents, servants, representatives or employees, or anyone for whose acts the CITIES or TOWN respectively, may be liable.

- (g) By entering into this Agreement, the COUNTY, CITIES, and TOWN are not agents of the STATE, its officers, employees, agents or assigns or each other. The COUNTY, CITIES, and TOWN are independent entities from the STATE and each other and nothing in this Agreement creates an agency relationship between any of the parties.
- (h) 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.
- (i) Notwithstanding any provision of this Agreement to the contrary, the parties will ensure that all accident and traffic data used for safety enhancement are kept confidential under 23 U.S.C. § 409 and not disclosed to third parties without the express written

permission of the Alabama Department of Transportation. The data shall not be referenced, disclosed, discussed or otherwise made public. The provision of this data shall not be considered as a waiver of the provision of 23 U.S.C. § 409. Upon execution of this Agreement, the parties and their agents, servants, officers, officials and employees in both their official and individual capacities, agree that the data provided pursuant to the above-referenced request shall not be discussed, disclosed, used, published or released without prior written consent of the Alabama Department of Transportation. Furthermore, if the data should be released or published without the consent of the Alabama Department of Transportation or should an attempt be made to use the data in an action for damages against the parties, their officials or employees, then access to the data shall terminate immediately. The Alabama Department of Transportation expressly reserves its rights under 23 U.S.C. § 409 to object to the use of the data and any opinions drawn from the data and to recover damages caused by the improper and unauthorized release of the data.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by those persons duly authorized to execute same, to be effective upon its execution by the Governor of Alabama.

ATTEST:

COUNTY OF BALDWIN

County Administrator/Budget Director

Chairman

ATTEST:

CITY OF DAPHNE

City Clerk

Mayor

ATTEST:

CITY OF FAIRHOPE

City Clerk

Mayor

ATTEST:

CITY OF SPANISH FORT

City Clerk

Mayor

ATTEST:

TOWN OF LOXLEY

Town Clerk

Mayor

ATTEST:

SOUTHWEST REGION ENGINEER

Secretary

Southwest Region Engineer

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

BY: _____
Chief Counsel, Jim R. Ippolito, Jr.

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

Multimodal Transportation Engineer,
Robert J. Jilla

Chief Engineer, Don T. Arkle, P. E.

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

Transportation Director, John R. Cooper

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed
by the Governor on this _____ day of _____, 20 _____.

GOVERNOR OF ALABAMA, ROBERT BENTLEY