

K-08-1390

**AGREEMENT**

**FOR**

**ADMINISTERING U.S. DEPARTMENT OF TRANSPORTATION**

**FINANCIAL ASSISTANCE FOR TRANSPORTATION PLANNING**

**BETWEEN**

**THE STATE OF ALABAMA**

**AND**

**THE BALDWIN COUNTY COMMISSION**

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

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

WHEREAS, the West Florida Regional Planning Council has been selected by principal elected officials as the designated transportation planning agency for the Lillian portion of Pensacola, Florida-Alabama 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 COUNTY for Transportation Planning for the Lillian portion of Pensacola, Florida-Alabama 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 COUNTY. The West Florida Regional Planning Council will do the planning for the Lillian area and will invoice the COUNTY for costs for transportation planning work performed in the Lillian portion of the Pensacola, Florida-Alabama urbanized area.
- 2) Any planning funds provided to the COUNTY 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 for the Pensacola, Florida-Alabama urbanized area.
- 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 COUNTY. 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 COUNTY.

- 6) The COUNTY 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 COUNTY 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 COUNTY on or after October 1, 2008, 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 COUNTY will be responsible for having an adequate accounting system, and the COUNTY 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 COUNTY has an adequate accounting system. Such determination will be documented prior to payment of the first invoice.
- 10) The COUNTY may invoice the STATE not more frequently than monthly on forms furnished by the STATE for work performed under this agreement. The COUNTY's final invoice for this agreement must be received on or before December 31 of each year.
- 11) The COUNTY will abide by 49 CFR 18.6, and all provisions of OMB Circulars A-133, with respect to audit requirements, and 2 CFR 225, with respect to cost principles, and 48 CFR 31, and all attachments thereto, currently in force in performing work under the terms of this agreement.
- 12) The use of planning funds by the COUNTY for out-of-state travel must be

approved by the STATE two weeks prior to the travel date.

- 13) The COUNTY 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 COUNTY 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 COUNTY will also permit the above named persons to audit the books, records, and accounts of the COUNTY pertaining to the project as defined herein. The COUNTY will retain intact, for three years following Federal project close-out, 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 COUNTY will furnish a copy of the audit report to the Examiner of Public Accounts and two copies to the STATE. In addition, the COUNTY 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 COUNTY 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 COUNTY will perform or have performed all services required to fulfill the purposes of this agreement.
- 17) The COUNTY 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 COUNTY 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 days prior written notice to the COUNTY 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 COUNTY 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 COUNTY is performing, the COUNTY will have the right to terminate the agreement by giving thirty 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 COUNTY 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 COUNTY 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 COUNTY 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 COUNTY 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 COUNTY will be responsible for and save harmless the STATE, its officers,

employees, agents, or servant from all claims and liability due to its negligent acts or the negligent acts of its subcontractors, agents, or employees in connection with their services under this agreement.

- 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 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 COUNTY will not discriminate against any employee or applicant for employment because of age, disability, race, religion, color, sex, or national origin. The COUNTY will take affirmative action to ensure that applicants are employed, and that employees 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 COUNTY for compliance with the provisions of this section.
- 26) The COUNTY will support 49 CFR, Part 26, Disadvantaged Business Enterprises (DBE), and it's 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 DEB 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

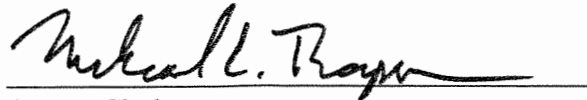
result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.


- 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 COUNTY and the STATE executed on the 10<sup>th</sup> day of November 2004 is hereby made null and void.
- 29) 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, 1975 (7/24<sup>th</sup> 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.

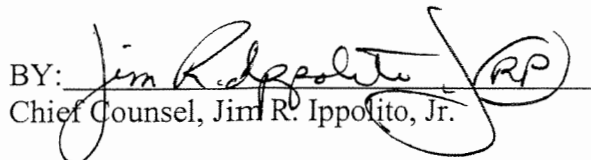
ATTEST:

THE BALDWIN COUNTY COMMISSION

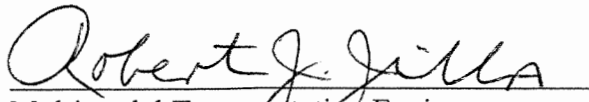
  
County Clerk

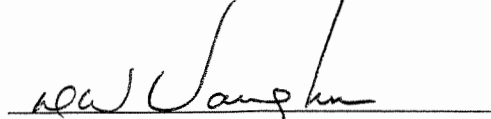
BY:   
Chairman

APPROVED AS TO FORM:

BY:  (RP)  
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

  
Multimodal Transportation Engineer  
Robert J. Jilla

  
Chief Engineer, D.W. Vaughn

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

  
Transportation Director, D. J. McInnes

The foregoing Agreement is hereby approved by the Governor of the State of Alabama  
this 7 day of NOVEMBER, 2008.

  
GOVERNOR OF ALABAMA, BOB RILEY

RESOLUTION # 2009-12

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) to be made available to designated transportation planning agencies for supporting the "3-C" Process; and

WHEREAS, the West Florida Regional Planning Council has been selected by principal elected officials as the designated transportation planning agency for the Lillian portion of Pensacola, Florida-Alabama urbanized; and

WHEREAS, the Baldwin County, Alabama Commission has been selected as the designated transportation planning agency to administer funds for the Lillian, Alabama portion of the Pensacola, Florida-Alabama 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 Lillian portion of the Pensacola, Florida-Alabama urbanized area.

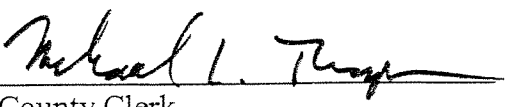
NOW, THEREFORE, be it resolved by the Baldwin County, Alabama Commission that the Chairman of the Baldwin County Commission be authorized to execute, and the County Clerk be authorized to attest, an agreement with the State of Alabama for administering U.S. Department of Transportation Financial Assistance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

  
Baldwin County Commissioner

DATE:

October 7, 2008

ATTEST:

  
County Clerk



# COUNTY COMMISSION

BALDWIN COUNTY  
312 COURTHOUSE SQUARE, SUITE 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
FAX (251) 580-2500

CLERK  
: BRAD BRYCE  
: KATHY BISHOP  
: JUDITH A. CHURCH  
: CHRISTOPHER CRUGER  
  
MICHAEL L. THOMPSON  
COUNTY ADMINISTRATOR


## CERTIFICATE

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Michael L. Thompson, County Administrator of Baldwin County, Alabama, and of the Baldwin County Commission, do hereby certify that the foregoing Resolution #2009-12 is a true and correct original adopted by the Baldwin County Commission during the October 7, 2008 Baldwin County Commission Meeting, of which a copy of same appear(s) of record in the official minutes of the October 7, 2008 Baldwin County Commission meeting, and the same is still in force and effect.

WITNESS my hand and the seal of the Baldwin County Commission this the 17<sup>th</sup> day of October, 2008, at Bay Minette, Alabama.

  
*Michael L. Thompson*  
County Administrator of Baldwin County, Alabama and of the Baldwin County Commission