



**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>

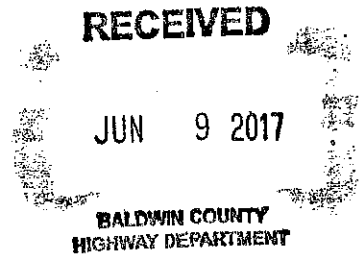


Kay Ivey  
Governor

John R. Cooper  
Transportation Director

June 6, 2017

Chair of County Commission  
Baldwin County Commission  
Silverhill, Alabama



RE: BRZ-0217( )  
BCP 02-045-17P  
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 preliminary engineering 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:lj  
Attachment

- cc: Mr. Clay McBrien (Original Agreement)
- Mr. Bill Flowers (Ms. Tamiko Jordan)
- Mr. Jimmie L. Gray
- Mr. Joey Nunnally
- Mr. Vincent Calametti
- File

**AGREEMENT FOR  
PRELIMINARY ENGINEERING  
ON A FEDERAL AID 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 State Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA:

**WITNESSETH**

**WHEREAS**, the STATE and the COUNTY desire to cooperate in the preliminary engineering for the bridge replacement of BIN 4805 on CR-9 over Barner Branch. Project #BR-0217( ), BCP 02-045-17P, CPMS Ref. #100066812.

**NOW THEREFORE**, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This agreement will cover only the preliminary design engineering aspect for the proposed improvements in accordance with plans approved by the STATE.
- (2) The preliminary design engineering phase is hereby defined as that work necessary to advance the development of the project through construction authorization by the FHWA. This phase will include all environmental studies and documentation required by the FHWA. The COUNTY will perform all preliminary design engineering with COUNTY forces, or with a consultant selected and approved by the STATE, as part of the project cost. Plans will be approved by the STATE.
- (3) The COUNTY will acquire any additional right-of-way, if needed, for the project at no cost to the STATE or this project.
- (4) 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.

- (5) Funding for this agreement is subject to the availability of Federal Aid funds at the time of authorization. In the event of an underrun in preliminary engineering costs, the amount of Federal Aid funds will be the amount stated below, or 80 percent of eligible costs, whichever is less. The estimated cost and participation by the various parties are as follows: ✓

Federal Funds (2016)	\$ 136,314.40
County Funds	<u>34,078.60</u>
Total (including Indirect Cost)	\$ 170,393.00 ✓

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 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. ✓

- (6) 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. ✓
- (7) 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. ✓
- (8) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (9) The COUNTY will submit reimbursable invoices for 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.
- (10) 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. ✓
- (11) 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. ✓
- (12) Each party will provide without cost to the other, information available from its records that will facilitate the performance of the work.

(13) 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 (7/24<sup>th</sup> law).

(14) 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. ✓

(15) 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. ✓

(16) 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. ✓

(17) 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.

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

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

IN WITNESS WHEREOF, the parties hereto cause this agreement to be executed by those officers, officials, and persons themunto 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:

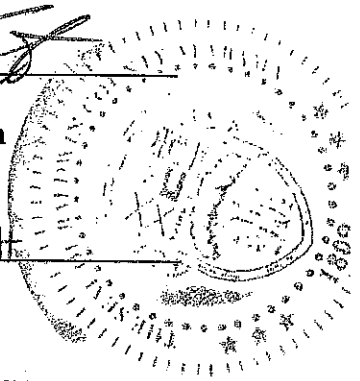
BALDWIN COUNTY, ALABAMA

*Ronald J. Cink*  
Administrator (Signature)

BY: *T. Christopher Elliott*  
Chairman (Signature)  
Baldwin County Commission

Ronald J. Cink  
Type Name of Administrator

T. Christopher Elliott  
Type Name of Chairman



RECOMMENDED:

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

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

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

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

BY: *William R. ...*  
William R. ... Chief Counsel ✓  
Alabama Department of Transportation

*John R. Cooper*  
Transportation Director ✓  
John R. Cooper

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON THE  
1<sup>st</sup> DAY OF April, 2017

*Kay Ivey*  
GOVERNOR OF ALABAMA  
KAY IVEY *Kay Ivey*

RESOLUTION NUMBER 2017-088

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 preliminary engineering for the bridge replacement of BIN 4805 on CR-9 over Barner Branch. Project BR-0217( ), BCP 02-045-17, CPMS Ref. #100066812;

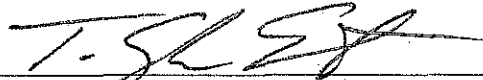
which agreement is before this Commission, and that the agreement be executed in the name of the County, by the Chairman of the Commission for and on its behalf and that it be attested by the County Administrator and the seal of the County affixed thereto.

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 11<sup>th</sup> day of May, 2017.

ATTESTED:

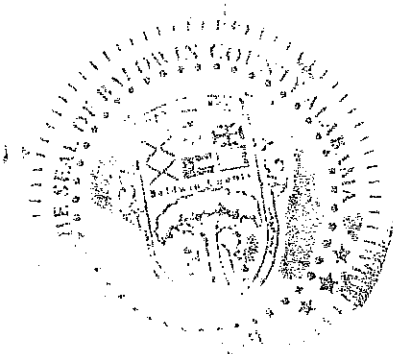
  
\_\_\_\_\_  
County Administrator

  
\_\_\_\_\_  
Chairman, Baldwin County Commission

I, the undersigned qualified and acting as 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 11<sup>th</sup> day of May, 2017, and that such resolution is of record in the record book of the County.

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

SEAL



  
\_\_\_\_\_  
County Administrator

EXHIBIT M

**CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING**

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:

- a. 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.
- b. 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.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

**TERMINATION DUE TO INSUFFICIENT FUNDS**

- a. 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.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

**NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS**

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.