



Kay Ivey
Governor

ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110

LOCAL TRANSPORTATION BUREAU




John R. Cooper
Transportation Director

June 24, 2020

MEMORANDUM

TO: Mr. John R. Cooper
Transportation Director

ATTN: Mr. Don T. Arkle, P.E.
Chief Engineer

FROM: D.E. Phillips, Jr., P.E. 
State Local Transportation Engineer

SUBJECT: Integrated Mobility Innovation Agreement between **Baldwin County Commission** and the **State of Alabama**

Attached is the Integrated Mobility Innovation Agreement between **Baldwin County Commission** and the **State of Alabama** for Integrated Mobility Innovation project for **Baldwin County**.

No State funds are involved in this project. Approval is recommended.

DEP:RRS:kor

Attachment

CC: Agency's file



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John R. Cooper
Transportation Director

23 JUN '20 PM 3:09

June 23, 2020

MEMORANDUM

TO: Mr. William F. Patty
Chief Counsel

FROM: D.E. Phillips, Jr., P.E.
State Local Transportation Engineer

Kasey Rogers For D.E.P

SUBJECT: Integrated Mobility Innovation Agreement between **Baldwin County Commission** and the **State of Alabama**

Attached is the Integrated Mobility Innovation Agreement between **Baldwin County Commission** and the **State of Alabama** for Integrated Mobility Innovation project for **Baldwin County**.

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AGREEMENT

BETWEEN

BALDWIN COUNTY COMMISSION

AND THE

STATE OF ALABAMA

RELATIVE TO

A

PASS THROUGH OF FEDERAL FUNDS

FOR

BALDWIN COUNTY

**A SPECIALIZED TRANSPORTATION PROJECT RELATIVE TO A PASS THROUGH
OF FEDERAL FUNDS FOR AN INTEGRATED MOBILITY INNOVATION (IMI)
PARTNERSHIP GRANT FOR THE BALDWIN REGIONAL AREA TRANSIT SYSTEM
(BRATS) ON DEMAND**

**Project ID # BC-IMI-FY19
Competitive Application for FTA-2019-008-TRI**

[Integrated Mobility Innovation Agreement](#)

AGREEMENT
BETWEEN
THE BALDWIN COUNTY COMMISSION
AND THE
STATE OF ALABAMA
RELATIVE TO A PASS THROUGH OF FEDERAL FUNDS FOR
AN INTEGRATED MOBILITY INNOVATION (IMI) FOR THE BALDWIN REGIONAL
AREA TRANSIT SYSTEM (BRATS) ON DEMAND

PART ONE (1): INTRODUCTION

THIS AGREEMENT made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as **STATE**; and **BALDWIN COUNTY COMMISSION**, hereinafter referred to as **Commission**, in cooperation with the Federal Transit Administration, hereinafter referred to as FTA; and

WHEREAS, the Application and Guidelines for Integrated Mobility Innovation (IMI) funds relative to the service provided herein are made an express part of this Agreement.

WHEREAS, it is in the public interest for the **STATE** and the **BALDWIN COUNTY COMMISSION** to cooperate in implementing specialized transportation projects; and

WHEREAS, the **STATE** is the designated recipient for certain FTA capital, operating and administrative transportation funds; and

WHEREAS, the **BALDWIN COUNTY COMMISSION** has been selected by the FTA to be the local implementing (operator) to provide the specialized transportation service and/or equipment and the management and operation thereof under the terms of this Agreement; and

WHEREAS, the **BALDWIN COUNTY COMMISSION** developed a capital award application, including the documents relating thereto, which were submitted to FTA, and approved by it; and

WHEREAS, the **STATE** and **COMMISSION** currently cooperate in the implementation of public transportation projects as provided in the Statewide Transportation Improvement Program; and

WHEREAS, the **COMMISSION** is the local implementing **AGENCY** (operator) providing

Integrated Mobility Innovation Agreement

the public transportation service and/or equipment and the management and operation thereof in Baldwin County, Alabama; and

WHEREAS, the **COMMISSION** has been selected to participate in the Federal Transit Administration (FTA) Integrated Mobility Innovation (IMI) Program to create one of the nation's first rural, fully on-demand public transit systems (hereinafter referred to as "**PROJECT**") which will involve testing and deploying technology to simultaneously accommodate both intrazone trips and long-distance interzone trips; and

WHEREAS, the **COMMISSION**, in conformity with the IMI Program requirements, identified Via Mobility, LLC, (hereinafter referred to as "**VIA**") as an essential Key Partner in the deployment and demonstration of the innovation; and

WHEREAS, the FTA, upon approval of an essential Key Partner, permits a noncompetitive award by **COMMISSION** to the Key Partner; and

WHEREAS, the **PROJECT** will involve the deployment of cutting edge, on-demand technology that will require configuration and customization for **COMMISSION's** specific needs for utilization in the **COMMISSION's** service area; and

WHEREAS, the **PROJECT** will require the technical services of a person or persons who possess a computer engineering degree, or who are considered to be computer engineers based on their technical knowledge or skill; and

WHEREAS, the requirements of the **PROJECT** are such that it is not possible to competitively bid out these professional services using technical specifications, and any specifications that could be generated would not be sufficiently definite to allow potential bidders to prepare bids intelligently or for the **COMMISSION** to adequately compare the bids received; and

WHEREAS, **VIA** is an industry leader in mobility on demand ridesharing technology, whose team of software engineers and project managers has guided public and private partners around the world through complex mobility on demand transit software deployments, that desires to partner with the **COMMISSION** as a Key Partner on the Project; and

WHEREAS, the **COMMISSION** and **STATE**, find that the **PROJECT** requires essential professional computer and engineering services that meet one or more of the requirements of ALA. CODE § 41-16-51 which governs contracts for which competitive bidding is not required.

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

PART TWO (2): PROJECT PROVISIONS

- A. **Project Description:** The **BALDWIN COUNTY COMMISSION** will undertake a transportation project hereinafter referred to as the "project" in which **BALDWIN County**, are the project areas of this Agreement. The project will be accomplished or performed by the **BALDWIN COUNTY COMMISSION** in accordance with this Agreement and the requirements, provisions, terms, and conditions of the award applications, including the documents relating thereto, developed by the **STATE** and the **BALDWIN COUNTY COMMISSION**. These applications, including the documents relating thereto, are of record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. The **BALDWIN COUNTY COMMISSION** shall use the project equipment at all times exclusively in conformity with the project description for as long as the equipment is needed for the project. It is understood by the **BALDWIN COUNTY COMMISSION** that failure to carry out the project in accordance with this Agreement, including the award applications and documents related thereto, may result in the loss of federal funding for the project. This project will commence upon execution of this Agreement and written authorization to proceed from the **STATE**.
- B. **Project Funding:** It is expressly understood that federal funds for this project are being provided through the award approved by USDOT as authorized under Section 3006(b) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94, Dec. 4, 2015), and subsequent amendments, as applicable, and the **STATE** will not be liable for any funding. It is understood that any costs incurred by the **BALDWIN COUNTY COMMISSION** in administering this project which are determined to be ineligible for reimbursement by the USDOT will be borne by the **COMMISSION** with no liability to the **STATE**.
- C. **Term of Contract:** The period of performance of this Agreement shall cover the duration of the project unless amended in writing by the **STATE**.
- D. **Regulations:** The **BALDWIN COUNTY COMMISSION** agrees to comply and become familiar with all state and federal laws, rules, regulations and procedures applicable to this Agreement. The **STATE**, upon request, will furnish to the **COMMISSION** a copy of any and all such applicable state and federal laws, rules, regulations and procedures. The **COMMISSION**, in conformity with the IMI Program, is permitted to utilize an essential Key Partner, through a non-competitive aware, in the deployment and demonstration of the innovation. The **COMMISSION** and **STATE** find that the PROJECT requires essential professional computer and engineering services that meet one or more of the requirements of ALA. CODE § 41-16-51 which governs contracts for which competitive bidding is not required.
- E. **Purchase of Project Capital Equipment:** The purchase of project equipment financed in whole or in part pursuant to this Agreement will be in accordance with applicable state and federal laws, rules regulations and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity. No federal funds

administered by ALDOT shall be used for purchases of vehicles or equipment by the **BALDWIN COUNTY COMMISSION** without the written consent of the **STATE**. The **STATE** will solicit bids and make awards for vehicles purchased pursuant to this Agreement and the **BALDWIN COUNTY COMMISSION** will transmit to the **STATE**, a certified check payable to the Alabama Department of Transportation for vehicle or equipment valid when given and when presented for payment for any required match or non-federal participating share of the bid price of the project equipment. The check will accompany the order form of the **BALDWIN COUNTY COMMISSION** for the project equipment. The federal share of the cost of the project will not exceed the amount indicated in the latest approved project budget. It is expressly understood that the entire cost of project vehicles and equipment in excess of the specified federal share will be borne by the **BALDWIN COUNTY COMMISSION** with no liability to the **STATE**, USDOT and FTA. The **BALDWIN COUNTY COMMISSION** recognizes and acknowledges that the **STATE** provides federal funding for this project keeping with the provisions of this Agreement, and that the **STATE** is responsible for protection of such funds so paid or invested. In order to better secure federal and state funding paid and invested by the **STATE**, the **BALDWIN COUNTY COMMISSION** does hereby award and convey to the State of Alabama a lien on and against any and all vehicles and equipment purchased under this Agreement in an amount equal to any and all funds paid by the **STATE** from Federal funding, toward the respective purchase of any and all vehicles and equipment under this Agreement.

- F. Use of Equipment:** All project vehicles and equipment will be at all times used for providing specialized transportation services within the project area described in this Agreement, including the approved award applications and related documents, for the duration of the project. If, during such period, project equipment is not used in this manner or is withdrawn from transportation service, the **BALDWIN COUNTY COMMISSION** will immediately notify the **STATE** and the project equipment will be disposed of by the **STATE** or reassigned in accordance with federal regulations and as directed by the **STATE**. The provisions of this Agreement and the provisions of Title 49 Code of Federal Regulations Part 18, "Uniform Administrative Requirements for Awards and Cooperative Agreements to State and Local Governments," will govern all project property, utilization and disposition. During the period of project performance under this Agreement, the **BALDWIN COUNTY COMMISSION** will maintain the project equipment and facilities at a high level of cleanliness, safety, and mechanical soundness. The **STATE**, USDOT and FTA will have the right to conduct periodic inspections of project facilities, equipment, and project areas and premises for the purpose of confirming proper maintenance pursuant to these regulations.
- G. Non-Expendable Purchases:** The purchase of all non-expendable items, other than the procurements of the Key Partner's services included within the IMI grant application, over three thousand dollars (\$3,000.00) must be requested in advance by the **BALDWIN COUNTY COMMISSION**, and approved in writing by the **STATE** to be eligible for reimbursement.

- H. **Lease of Project Vehicles:** Any Agreement made by the **COMMISSION** for lease of a vehicle or vehicles will be subject to written approval of the **STATE**. When vehicles are leased from private enterprise, the lease will contain a provision for applying a portion of the lease cost toward the purchase price in the event the vehicles are purchased at a later date. All vehicle leases will be subject to applicable bidding requirements of Federal and State of Alabama law.
- I. **Insurance:** The **BALDWIN COUNTY COMMISSION** will have insurance coverage adequate to protect the project vehicles, facilities, and equipment. In addition, the **COMMISSION** will have adequate public liability insurance coverage with limits for bodily injury not less than \$100,000.00 to any one person and not less than \$300,000.00 for any one accident and property damage of not less than \$50,000.00, which insurance will be in effect at all times during performance of this project. Documentation acceptable to the **STATE**, that the above-required insurance has been secured will be submitted to the **STATE**. Proof of insurance must also be provided to the **STATE** by the **BALDWIN COUNTY COMMISSION** prior to removal by the **BALDWIN COUNTY COMMISSION** of the vehicle from state property. All insurance shall be by companies authorized to do business in Alabama. The **BALDWIN COUNTY COMMISSION** shall also carry Workmen's Compensation coverage. The **BALDWIN COUNTY COMMISSION** will comply with any and all insurance requirements, which are imposed or required by the Alabama Public Service Commission in keeping with its authority, and such requirements as are imposed by the laws of the State of Alabama.
- J. **Licensing:** The **BALDWIN COUNTY COMMISSION**, in providing services under this Agreement, will comply with all state licensing standards and any other standards provisions applicable to this Agreement or which might be applicable to its operations under this Agreement.
- K. **Motor Vehicle Safety Standards:** The **BALDWIN COUNTY COMMISSION** agrees to comply with and assures its third-party contractor(s) will comply with, the U.S. Federal Motor Carrier Safety Administration (FMCSA) regulations, as applicable.
- L. **Contracts Under This Agreement:** The **BALDWIN COUNTY COMMISSION** will not assign any portion of the 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 the prior written concurrence of the **STATE**.
- M. **Audit and Inspection:** The **BALDWIN COUNTY COMMISSION** will permit the **STATE**, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives access, to inspect, at any time, any and all vehicles, facilities and equipment utilized or used in performance of the project; records of all transportation services rendered by the **BALDWIN COUNTY COMMISSION** in the use of such vehicles, facilities and equipment; and any and all data and records which in any way relate to the project

or to the accomplishment of the project.

The **BALDWIN COUNTY COMMISSION** will also permit the entities listed above to audit the records and accounts of the **BALDWIN COUNTY COMMISSION** pertaining to the project at any and all times, and the **BALDWIN COUNTY COMMISSION** will give its full cooperation to the **STATE**. Furthermore, the responsibility for auditing certain public entities, agencies and organizations is vested in the Department of Examiners of Public Accounts under the Laws of the State of Alabama. If the **BALDWIN COUNTY COMMISSION** is not subject to audit by the Department of Examiners of Public Accounts, the **BALDWIN COUNTY COMMISSION** does hereby agree that the **STATE** may, solely at the discretion of the **STATE**, request an audit of the **BALDWIN COUNTY COMMISSION** by the Department of Examiners of Public Accounts or another auditor at further discretion of the **STATE**, and that the **BALDWIN COUNTY COMMISSION** will fully cooperate with said audit. The **BALDWIN COUNTY COMMISSION** will ensure that the **STATE** is forwarded a copy of the audit within thirty (30) days of receiving the audit report or nine (9) months after the end of the audit period. Failure to do so may result in the suspension of payment to the **BALDWIN COUNTY COMMISSION**.

- N. **Audit Requirements:** The **BALDWIN COUNTY COMMISSION** will comply with all audit requirements set forth in the Uniform Guidance "Super Circular" published by the Office of Management and Budget at 2 CFR Part 200. USDOT incorporated these changes at 2 CFR part 1201, which deviates from part 200 only with respect to standard application requirements, equipment, procurements by States, and financial reporting. In addition, the **BALDWIN COUNTY COMMISSION** should submit to the External Audit Manager of the ALDOT, along with its annual audit report, a letter from its CPA setting out audit findings, whether material or immaterial, noted in this report. If there were no findings other than those noted in the audit report the CPA should issue a letter stating such. Furthermore, the **BALDWIN COUNTY COMMISSION** will maintain on file, within its office, a letter from its CPA stating the results of its peer review, whether favorable or unfavorable, as required by Government Auditing Standards (also known as the "Yellow Book"). As required by Legislative Act # 94-414, the Examiners of Public Accounts shall be the repository of audit reports for entities receiving public funds. The **BALDWIN COUNTY COMMISSION** shall provide a copy of its audit to the Examiners of Public Accounts when completed.
- O. **Equipment Management:** The **BALDWIN COUNTY COMMISSION** will comply with management standards specified in the "Uniform Administrative Requirements for Awards and Cooperative Agreements to State and Local Governments"(49 CFR Part 18.32) in the control, use, and disposition of equipment acquired under this award. Equipment management will also include the following:
1. Maintain equipment records that include a description of the equipment; a serial or other identification number; the source of the equipment; the acquisition date and cost of the equipment; percentage of federal and local participation in the cost of the equipment; the location, use and condition of the equipment; repairs and maintenance to equipment; and ultimate disposition data including the date of disposal and sale price.

2. An annual physical inventory to validate the inventory with records described in the preceding paragraph.
3. Develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage or theft shall be investigated.
4. Develop and follow procedures to keep the equipment maintained and in good condition. At a minimum, the **BALDWIN COUNTY COMMISSION** shall follow the vehicle maintenance schedule recommended by the manufacturer, showing the date, the maintenance was performed. Maintenance records shall be provided to the **STATE** upon request.
5. When original or replacement equipment acquired under an award is no longer needed for the original project or program or for other activities currently or previously supported by a federal or state agency, the **BALDWIN COUNTY COMMISSION** shall contact the **STATE** to request authority to dispose of the equipment, and the **STATE** shall issue disposition instructions.

P. Records and Reports:

1. **Establishment and Maintenance of Accounting Records.** The **COMMISSION** will establish and maintain, in accordance with requirements established by the **STATE**, separate accounts for the project, either independently or separately within its existing system, to be known as the Project Account. The cost accounting system must be adequate and acceptable to the **STATE** as determined by the Alabama Department of Transportation's External Audit Manager.
2. **Documentation of Project Cost.** All charges to the Project Account will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the **STATE**.
3. **Checks, Orders and Vouchers.** All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.
4. **Reports.** The **BALDWIN COUNTY COMMISSION** will report to the **STATE** the progress of the project in such a manner as the **STATE** may require. The **BALDWIN COUNTY COMMISSION** will also submit to the **STATE**, at the beginning of each fiscal year, certification in form and detail acceptable to the **STATE**, that the project equipment is still being used in accordance with the terms of this Agreement. The **BALDWIN COUNTY COMMISSION** will also provide to the **STATE** any information requested by the **STATE** regarding the project.
5. **Financial Statements.** The **BALDWIN COUNTY COMMISSION** will submit to the **STATE**, at such time as the **STATE** may require, such financial statements, data, records, contracts and other documents related to the project as may be requested by the **STATE**.

6. **Right of Access to Records.** The **STATE** will have full access to and right to examine all project records at all times, and all records of any nature which in any manner relate to the project or to this Agreement in any way.

- a. The **BALDWIN COUNTY COMMISSION** agrees to require its third-party contractor(s) and third party subcontractor(s), at as many tiers as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States, the **STATE**, or their duly authorized representatives, access to all third-party contract records to the extent required by 49 U.S.C. §5325(g).

The **BALDWIN COUNTY COMMISSION** further agrees to require its third-party contractors and third party subcontractors to provide sufficient access to third party procurement records as needed for compliance with federal regulations or to assure proper project management as determined by FTA.

- b. The **BALDWIN COUNTY COMMISSION** agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

7. **Retention of Records.** The **BALDWIN COUNTY COMMISSION** will retain all books, records, and other documents relative to this Agreement for three (3) years after project termination or close out or as otherwise required, and the **STATE**, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and the right to examine any of said materials at all reasonable times during said period.

- Q. **Prompt Payment Requirement:** The **BALDWIN COUNTY COMMISSION** will comply with 49 C.F.R. Part 26.29 in regards to prompt payment mechanisms and retainage payment. The **BALDWIN COUNTY COMMISSION** is required to pay subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment made to the **COMMISSION**. The **COMMISSION** must pay the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.

PART THREE (3): GENERAL PROVISIONS

- A. **BALDWIN COUNTY COMMISSION to Indemnify:** The **BALDWIN COUNTY COMMISSION** shall be responsible at all times for all of the work performed under this Agreement. The **BALDWIN COUNTY COMMISSION** 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 **BALDWIN COUNTY COMMISSION** pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the **BALDWIN COUNTY COMMISSION**, its officers, officials, agents, servants, and employees.

The term "hold harmless" includes the obligation of the **BALDWIN COUNTY COMMISSION** to pay damages on behalf of the State of Alabama, the Alabama Department of Transportation, and its agents, servants, and/or employees.

- B. **Permission to Start Work:** The **BALDWIN COUNTY COMMISSION** will not proceed with the project work until the **STATE** gives written authorization for the **BALDWIN COUNTY COMMISSION** to proceed.
- C. **Termination:** In the event the **BALDWIN COUNTY COMMISSION** fails at any time, in any manner, to comply with any provision, requirement, term or condition of this Agreement, such failure will constitute a default by the **BALDWIN COUNTY COMMISSION** under this Agreement. Any such default or defaults not corrected by the **BALDWIN COUNTY COMMISSION** within thirty (30) days following receipt of written notice from the **STATE** by certified or registered mail of such default or defaults, will be deemed a breach by the **BALDWIN COUNTY COMMISSION** of this Agreement, and the **STATE** may terminate this Agreement. A waiver by the **STATE** of a default or defaults by the **BALDWIN COUNTY COMMISSION** will not constitute a waiver of subsequent default or defaults by the **BALDWIN COUNTY COMMISSION**. In addition, if the award from USDOT is terminated by USDOT the **STATE** will have the right to terminate this Agreement by giving ten (10) days written notice of termination. This notice will be mailed by certified or registered mail. Unless otherwise terminated as herein provided, this Agreement will terminate upon expiration of the useful life of the project equipment.
- D. **Performance:** The **BALDWIN COUNTY COMMISSION** will commence, carry on, and complete the project with all practicable dispatch, in a sound, economical, and efficient manner.

- E. Civil Rights:** During the performance of this AGREEMENT, the **BALDWIN COUNTY COMMISSION** agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
- (1) Nondiscrimination in Federal Transit Programs – The **BALDWIN COUNTY COMMISSION** agrees to comply and assures the compliance of each third-party contractor at any tier under the Project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
 - (2) Nondiscrimination – Title VI – **BALDWIN COUNTY COMMISSION** agrees to comply, and assures the compliance of each third-party contractor at any tier of the Project, with all requirements under Title VI of the Civil Rights Act of 1964, as amended. These requirements provide that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 - (3) Equal Employment Opportunity – The **BALDWIN COUNTY COMMISSION** agrees to comply, and assures the compliance of each third-party contractor at any tier of the Project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), and 49 U.S.C. 5332 and any implementing requirements FTA may issue.
 - (4) Nondiscrimination on the Basis of Sex – The **BALDWIN COUNTY COMMISSION** agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 et seq.), with implementing DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, and with any implementing directives that DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
 - (5) Nondiscrimination on the Basis of Age – The **BALDWIN COUNTY COMMISSION** agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
 - (6) Nondiscrimination on the Basis of Disability – The **BALDWIN COUNTY COMMISSION** agrees to comply, and assures the compliance of each third-party contractor at any tier of the Project, with the provisions of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended, and all other applicable federal regulations relating hereto, issued by the USDOT.
 - (7) Disadvantaged Business Enterprise Requirements – The **BALDWIN COUNTY COMMISSION** agrees and assures that it shall not discriminate on the basis of race, color, sex, national origin or disability in the award and performance of any third-party contract or subagreement supported with Federal assistance derived from USDOT or in the administration of its DBE program and will comply with the requirements of 49 CFR part 26. Failure of the **BALDWIN COUNTY COMMISSION** to comply under the terms of this Agreement, or failure of its

contractor(s) at any tier to carry out the DBE requirements of this Agreement shall constitute a breach of contract, and may result in termination of the contract by the **STATE**, or other remedies may be undertaken by the **STATE** as it deems appropriate.

- (8) The **BALDWIN COUNTY COMMISSION** agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

- F. **Americans with Disabilities Act:** The **BALDWIN COUNTY COMMISSION** will comply with all requirements of The Americans with Disabilities Act of 1990 (ADA) which mandates equal opportunity in employment, transportation, telecommunications, and places of public accommodation for individuals with disabilities.
- G. **Activities Not Involving Construction:** The **BALDWIN COUNTY COMMISSION** agrees to comply, and assures that each third party contractor will comply, with the following federal laws and regulations providing Wage and Hour protections for nonconstruction employees: 1) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and 2) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- H. **Prohibited Interest:** No member, officer, or employee of the **BALDWIN COUNTY COMMISSION** during his tenure or for two (2) years thereafter will have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- I. **Project Administration:** The **BALDWIN COUNTY COMMISSION** will abide by, conform to, and comply with all provisions of Title 49 Code of Federal Regulations Part 18, "Uniform Administrative Requirement for Awards and Cooperative Agreements to State and Local Governments," in performance of this contract.
- J. **Disputes with Private Enterprise Providers of Transportation:** The **COMMISSION** will establish a process by which private providers may have disputes or conflicts arising out of the performance of this project properly heard and settled. This process will be submitted to the **STATE** within thirty (30) days from the notice to proceed with the project.
- K. **Charter Provisions:** Charter services provided by the **BALDWIN COUNTY COMMISSION** will be in compliance with USDOT charter regulations 49 CFR part 604 and subsequent legislation.
- L. **School Bus Provisions:** The **BALDWIN COUNTY COMMISSION** nor any third-party contractor that is participating in its Project will engage in school transportation service exclusively for the transportation of students or school personnel in

competition with private school transportation operators, except as permitted under:

- (1) Federal transit law, specifically 49 U.S.C. § 5323(f) or (g),
- (2) FTA regulations, "School bus Operations," 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. § 5323(f) or (g),
- (3) Any other federal "School Operations" regulations, or
- (4) Federal directives, except as FTA determines otherwise in writing.

- M. Dispute Resolution:** Should a dispute between the parties relate to the payment of money to the **COMMISSION**, the sole remedy of the **COMMISSION** shall be to file a claim with the State of Alabama Board of Adjustment. Any other dispute between the parties, senior officials of **STATE** and **COMMISSION** who have the authority to bind their principals to any agreement they should reach, shall meet and engage in a good faith attempt to resolve the dispute. Should negotiations not produce a resolution, the parties agree that the dispute shall be submitted to non-binding mediation, to be conducted in a mutually agreed location utilizing mediators selected from the roster maintained by the Alabama Center for Dispute Resolution. This right of the **STATE** to the use of alternative methods to attempt to resolve a dispute is not a waiver of the **STATE's** right to assert sovereign immunity.
- N. Buy America:** The **BALDWIN COUNTY COMMISSION** will comply with all applicable Buy America Requirements as referenced in Section 1048 of the Federal Transit Act Amendments of 1991 and subsequent legislation.
- O. Other Applicable Regulations:** The **BALDWIN COUNTY COMMISSION** will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 United States Code 1857(h)], Section 508 of the Clean Water Act (33 United State Code 1368), Executive Order 11738, Environmental Protection Agency regulations (40 Code of Federal Regulations 15).
- P. Restrictions on Lobbying:** The **BALDWIN COUNTY COMMISSION** will comply with all applicable restrictions on Lobbying as referenced in 49 C.F.R. Part 20. The **BALDWIN COUNTY COMMISSION** agrees that no federal financial assistance may be used to influence any Member of Congress or an officer or employee of any **BALDWIN COUNTY COMMISSION** in connection with the making of any federal contract, award, or cooperative Agreement.
- Q. Out-of-State Travel:** All out-of-state travel (travel outside Alabama) costs under this project must be requested in advance by the **BALDWIN COUNTY COMMISSION** on the correct state travel request form, and approved in writing by the **STATE** to be eligible for reimbursement.
- R. In-State Travel:** All in-state travel costs incurred under this project will be subject to the per diem policies of the State of Alabama. These policies are revised periodically and thusly will reflect revised per diem rates.

- S. Subcontractors:** The **BALDWIN COUNTY COMMISSION** will not enter into any subcontract which utilizes USDOT funds or USDOT funded equipment without prior written consent of the **STATE** and will include in all subcontracts entered into pursuant to this Agreement all of the above clauses as required by the **STATE**.
- T. Agreement Change:** The terms of this Agreement may be modified by supplemental Agreement duly executed by the parties hereto.
- U. Drug and Alcohol Testing:** The **BALDWIN COUNTY COMMISSION** is not subject to FTA's Drug and Alcohol testing rules but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for employees who hold Commercial Driver's License (CDLs) (49 C.F.R. part 382). Innovative Coordinated Access and Mobility (ICAM) public transportation subrecipients that also receive funding under Sections 5307 or 5311 should include any employees funded under the Innovative Coordinated Access and Mobility (ICAM) public transportation project in their testing program.
- V. Drug-Free Workplace Act of 1988:** The **BALDWIN COUNTY COMMISSION** assures the **STATE** that it publishes a statement notifying employees of the policies in support of a drug-free workplace; and establishes an ongoing drug-free awareness program to inform employees about:
1. The dangers of drug abuse in the workplace;
 2. The **BALDWIN COUNTY COMMISSION's** policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance programs, and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- V. Privacy Act:** The **BALDWIN COUNTY COMMISSION** shall comply with the Privacy Act of 1974 (5 U.S.C. Section 552a) and the rules and regulations issued pursuant to the Act when the performance of this Agreement involves activities associated with maintaining a system of records on individuals to be operated by the **COMMISSION** its contractors or employees to accomplish a Government function. The **BALDWIN COUNTY COMMISSION** shall include this Privacy Act notification in every approved subcontract for the same purpose.
- W. Program Fraud and False of Fraudulent Statements and Related Acts:** The **BALDWIN COUNTY COMMISSION** acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the **BALDWIN COUNTY COMMISSION** the penalties of 18 U.S.C. § 1001, 31 U.S.C. §§ 3801 et seq., and 49 U.S.C. § 5307 (n)(1), as the Federal Government may deem appropriate. The terms of U.S. D.O.T. regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to this project.

- X. Suspension And Debarment:** The terms of the U.S. DOT regulation, "Suspension and Debarment of Participants in DOT Financial Assistance Programs," set forth in Executive Order 12549 and implemented by 49 CFR Part 29, are applicable to this award Agreement. Furthermore, any contractor employed by the **BALDWIN COUNTY COMMISSION** is also bound by the terms of 49 CFR Part 29 and must complete a Lower Tier Participant Certification. The **BALDWIN COUNTY COMMISSION** warrants the debarment certification furnished as part of the application is current and valid.
- Y. Energy Conservation:** The **BALDWIN COUNTY COMMISSION** agrees to comply with the mandatory standards and policies relation to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- Z. Liquidated Damages Provision:** The **BALDWIN COUNTY COMMISSION** may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day or overrun in contract time; and the rate must be specific in the third-party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.
- AA. 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 of 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 that conflicting provision in the Agreement shall be deemed null and void.
- BB. Termination Due To Insufficient Funds:**
1. 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 or available for the continued payment of the Agreement in subsequent fiscal years.
 2. In the event of proration of the fund from which payment under this Agreement is to be made, Agreement will be subject to termination.
- DD. Federal Changes:** The **BALDWIN COUNTY COMMISSION** shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The **BALDWIN COUNTY COMMISSION's** failure to comply shall constitute a material breach of this contract.

- EE. No Federal Government Obligations to Third Parties by Use of a Disclaimer:**
1. The **BALDWIN COUNTY COMMISSION** acknowledges and agrees 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 or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
 2. The **BALDWIN COUNTY COMMISSION** agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- FF. Incorporation of Federal Transit Administration (FTA) Terms:** All contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **BALDWIN COUNTY COMMISSION** shall not perform any act, fail to perform any act, or refuse to comply with any **STATE** or Federal requests which would cause the **STATE** to be in violation of the FTA terms and Conditions.
- GG.** 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.
- HH.** By entering into this Agreement, the **BALDWIN COUNTY COMMISSION** is not an agent of the **STATE**, its officers, employees, agents or assigns. The **BALDWIN COUNTY COMMISSION** is an independent entity from the **STATE** and nothing in this Agreement creates an agency relationship between the parties.
- II.** In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by those officers and officials duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

By: _____

Title: _____

BALDWIN COUNTY COMMISSION

By: _____

Title: _____

This Agreement has been legally reviewed and approved as to form and content.

William F. Patty
William F. Patty
Chief Counsel
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

D.E. Phillips, Jr. (BS)
D.E. Phillips, Jr., P.E.
State Local Transportation Engineer

Don T. Arkle
Don T. Arkle, P.E.
Chief Engineer
Alabama Department of Transportation

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

John R. Cooper
John R. Cooper
Transportation Director

The foregoing Agreement is hereby
executed in the name of the State of
Alabama and signed by the Governor on
the 12 day of July, 2020.

Kay Ivey
Kay Ivey
Governor, State of Alabama

State of Alabama
County of Baldwin

CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by ACT 2012-491)

DATE: 6/16/20

RE Contract/Grant/Incentive (describe by number or subject):

_____ by and between

(Contractor/Grantee) and

(State Agency, Department or Public Entity)

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of _____ with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by ACT 2012-491) which is described herein as "the Act."
2. Using the following definitions from Section 3 of the Act, select and initial either (a) or (b), below, to describe the Contractor/Grantee's business structure.

BUSINESS ENTITY. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.

a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, and foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.

b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

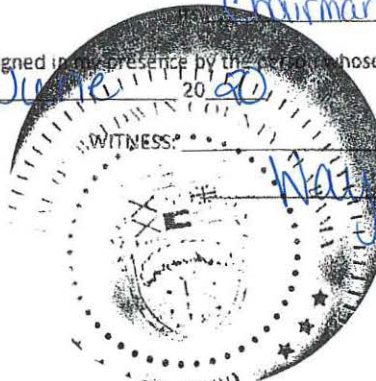
EMPLOYER. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

- _____ (a) The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.
- _____ (b) The Contractor/Grantee is not a business entity or employer as those terms are defined in Section 3 of the Act.
3. As of the date of this Certificate, the Contractor/Grantee does not knowingly employ an unauthorized alien within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama;
 4. The Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this 16th day of June, 2020
Billie Jo Underwood
Name of Contractor/Grantee/Recipient

By: Billie Jo Underwood
Chairman

The above Certification was signed in my presence by the person whose name appears above, on this 16th day of June, 2020.



Wayne Dyess
Printed Name of Witness

RESOLUTION NUMBER #2020-091

BE IT RESOLVED, by the Baldwin County Commission, Baldwin County, Alabama, as follows:

1. That the Baldwin County Commission enter into an agreement with the State of Alabama: acting by and through the Alabama Department of Transportation relating to public transportation with partial funding by the Federal Transit Administration, which agreement is before this Baldwin County Commission;
2. That the agreement to be executed in the name of the Baldwin County Commission, by the Chairman of the Baldwin County Commission for and on its behalf:
3. That such execution be attested by the Chairman and the seal of the Baldwin County Commission affixed thereto:

CERTIFICATION

I hereby certify that the following resolution is a true and correct copy of the resolution presented to and adopted by Baldwin County Commission at a duly authorized meeting held on the 16th day of June 2020, as shown by the minutes of the meeting in my possession.


Billie Jo Underwood, Chairman

ATTEST:


Wayne Dyess, County Administrator

