



BOB RILEY  
GOVERNOR

# ALABAMA DEPARTMENT OF TRANSPORTATION

NINTH DIVISION  
OFFICE OF DIVISION ENGINEER  
1701 I-65 WEST SERVICE ROAD N  
MOBILE, ALABAMA 36618-1109  
TELEPHONE: (251) 470-8200  
FAX: (251) 473-3624



JOE MCINNES  
TRANSPORTATION DIRECTOR

July 23, 2010

The Honorable John E. Koniar  
Mayor, City of Foley  
P.O. Box 1750  
Foley, Alabama 36536-1750

RE: **Project No. SRTS-SR10 (916)**  
**Signage/Alternate drop-off site Projects**  
**City of Foley**  
**Baldwin County**

Dear Mayor Koniar:

Attached please find a copy of the fully executed agreement on the above referenced project.  
This is for your information and files.

If you have any questions, please call Dewayne Hood at (251) 470-8253.

Sincerely,

Vincent E. Calametti, P.E.  
Division Engineer

By:

Dewayne A. Hood  
Transportation Administrator  
Special Projects

VEC/DAH/dah  
Attachment  
c: File

8-3-10  
cc Sue, Vichey,  
Batal A.

Rec'd 8/4/10

**AGREEMENT  
FOR SAFE ROUTES TO SCHOOL PROJECT  
BETWEEN THE STATE OF ALABAMA AND  
THE CITY OF FOLEY  
FOR  
INFRASTRUCTURE IMPROVEMENTS  
IN  
BALDWIN COUNTY**

**Project No. SRTS – SR10 (916)**

**PART ONE (1): INTRODUCTION**

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 STATE; and the City of Foley , hereinafter referred to as AGENCY, in cooperation with the U. S. Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA, and

WHEREAS, Sections 1101(a)(17) and 1404 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Use (SAFETEA-LU) created the Safe Routes to School Program for primary and middle schools.

WHEREAS, the Safe Routes to School Program purpose should be... (1) to enable and encourage children, including those with disabilities, to walk and bicycle to school; (2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and (3) to facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

WHEREAS, the AGENCY developed a project application including the document relating thereto, which was subsequently submitted to the STATE and approved, and

WHEREAS, it is in the public interest for the STATE and the AGENCY to participate in the Safe Routes to School Program, as reflected in the application process and the guidelines for implementing a project grant.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

**PART TWO (2): PROJECT PROVISIONS**

- A. **Project Description:** The AGENCY will undertake a Safe Routes to School project in accordance with this Agreement, subject to the plans herein approved by the STATE and the requirements, provisions, terms, and conditions in the project application, including the documents relating thereto, developed by the AGENCY and approved by the STATE. This application, including the documents relating thereto, is on record at the STATE and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the AGENCY that failure to carry out the project in accordance with the Agreement, approved plans and the project application, including documents related thereto, may result in the loss of federal funding for the project.
- B. **Time Limit:** This project will commence upon execution of this Agreement and upon written authorization to proceed from the STATE directed to the AGENCY. The AGENCY shall have no more than one (1) year from the date of execution of this agreement to begin construction, or to commence other eligible activities in accordance with the scope of work approved by the STATE. If this stipulation is not met, the STATE will notify the AGENCY in writing that the project is terminated.
- C. **Project Funding:** It is expressly understood that federal funds for this project will be provided from SAFETEA-LU, Sections 1101(a)(17) and 1404 and the STATE will not be liable for any funding. It is further understood that this is a cost reimbursement program and no federal funds will be provided to the AGENCY prior to the accomplishment of

completed work for which reimbursement is requested. Cost for the project will be financed, when eligible for federal participation, on the basis of 100 percent federal Safe Routes to School funds, not to exceed a maximum amount of \$167,610.00. The State assumes no liability for funding this program. Plans for constructing improvements under this project will be developed by or for the AGENCY at no expense to the STATE or FHWA. Construction improvements under this agreement will be in keeping with applicable competitive bid laws unless another method of construction, such as a force account, is approved in writing by the STATE and FHWA. Any other cost incurred by the AGENCY relating to this project which is determined to be ineligible for reimbursement by the STATE and FHWA expenditures in excess of the limiting amount in this agreement will be borne and paid by the AGENCY with no liability of the STATE or FHWA for any such cost. The required engineering, inspection and construction oversight will be performed using STATE procedures and policies but without cost to the STATE or FHWA.

- D. Project Budget:** The AGENCY will develop and submit to the STATE for approval a proposed project budget. This budget will be in sufficient form and detail as may be required by the STATE. As a minimum, all major work items will be described in detail and an estimated cost and source of funds will be indicated for each item. Space will be provided for approval by the STATE Division Engineer and date of such approval. All items of cost for which the AGENCY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be accepted with adequate justification provided by the AGENCY, subject to the written approval of the STATE. However, under no

circumstances will the AGENCY be reimbursed for expenditures over and beyond the maximum amount approved by the STATE.

- E. **Ownership of Property:** All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the AGENCY at no expense to the STATE or FHWA. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the AGENCY. In cases where property is leased, the terms of the lease will not be less than the expected life of the improvements.
- F. **Acquisition of Property:** Acquisition of real property by the AGENCY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.
- G. **Protection of Interest:** No change in use or ownership of real property acquired or improved with funds provided under the terms of this agreement will be permitted without prior written approval from the STATE and FHWA. The STATE and FHWA will be credited on a prorata share any revenues received by the AGENCY from the sale or lease of property, which is the site of the federally funded project.
- H. **Purchase of Project Equipment and/or Services:** The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be procured in accordance with applicable state and federal laws, rules, regulations, and procedures, including utilization of state competitive bidding requirements applicable to counties, municipalities and school boards in the State of Alabama.  
  
The AGENCY will, when authorized by the STATE, will prepare and submit plans and cost estimates for construction and/or services pursuant to this agreement to the ALDOT



SRTS Division Representative. The AGENCY and the ALDOT Division will assure that the entire bid package (plans, specifications, estimates, etc.) meets all state and federal requirements. The AGENCY will receive written approval from the STATE to proceed.

- I. Invoicing:** The AGENCY will, when appropriate, submit invoices to the STATE for reimbursement for work performed by or for the AGENCY in carrying out the terms of this agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the appropriate Division Engineer for payment. The AGENCY may bill the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. The allowable costs are defined in 41 CFR Subpart 1-15.7 of the Federal Procurement Regulations and will include direct and indirect cost incurred in carrying out the project as shown in the approved application and the documents related thereto.

Invoices for any work performed by the AGENCY under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after the twelve-month period will not be eligible for payment.

- J. Maintenance:** Upon completion and acceptance of the work by the STATE, the AGENCY will assume full responsibility for the completed facilities.
- K. Contracts under this Agreement:** The AGENCY 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 approval of the STATE.

**L. Records and Reports:**

1. Establishment and Maintenance of Accounting Records: The AGENCY 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 approved and acceptable to the STATE as determined by the auditor of the STATE.
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 kept separate and apart from all other such documents.
4. Reports: The AGENCY will provide monthly reports to the STATE on progress of the project in such manner as the STATE may require. The AGENCY will also provide the STATE any information requested regarding the project.
5. Financial Statements: The AGENCY will submit to the STATE, at such time as the STATE may require, such financial statements, data, records, contracts and other documents and items of any respect 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.

M. **Regulations:** The STATE hereby obligates the AGENCY to comply with all state and federal laws, rules, regulations, and procedures applicable to this Agreement. The STATE, upon request, will furnish to the AGENCY a copy of any and all applicable state and federal laws, rules, regulations, and procedures.

N. **Point of Contact:** The applicable or appropriate Division Office of the STATE will be the lead agency relative to the work performed under this agreement and will be the point of contact for the AGENCY.

### **PART THREE (3): MISCELLANEOUS PROVISIONS**

A. **Agency to Indemnify:** The AGENCY will be responsible at all times for this project and all of the work performed under this Agreement and especially the AGENCY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees, and agents of each, from and against any and all claims, actions, damages, loss, liabilities, including attorney's fees and expenses whatsoever or any amount paid in compromise thereof arising out of or in connection with the performance of the work under this Agreement and this project and from and against these at any time arising out of or in connection with the performed work and project.

B. **Audit and Inspection:** The AGENCY 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, to inspect, at any time, any and all equipment utilized or used in performance of the project; records of all transportation services



rendered by the AGENCY in the use of such equipment; and any and all data and records which in any way relate to the project or to the accomplishment of the project. The AGENCY will also permit the above noted persons to audit the books, records and accounts of the AGENCY pertaining to the project at any and all times and the AGENCY will give its full cooperation to those persons or their authorized representatives, as applicable.

**C. Audit Requirements:** The AGENCY will comply with all audit requirements set forth in the Federal Office of Management and Budget (OMB) circular A-128 or A-133 whichever is applicable.

**D. Termination:** In the event the AGENCY 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 AGENCY under this Agreement. Any such default or defaults not corrected by the AGENCY 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 AGENCY of this Agreement, and the right on the part of the STATE to terminate the Agreement by giving ten (10) days written notice of termination. A waiver by the STATE of a default or defaults by the AGENCY will not constitute a waiver of subsequent default or defaults by the AGENCY. In addition, if funding for this project is terminated by FHWA, the STATE will have the right to terminate this Agreement by giving ten (10) days written notice of termination. Said notice will be mailed by certified or registered mail.

**E. Retention of Records:** The AGENCY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of federal interest, or close out, 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 right to examine any of said materials at all reasonable times during said period.

- F. **Performance:** The AGENCY will commence, carry on, and complete the project with all practical dispatch, in a sound, economical, and efficient manner.
- G. **Equal Employment Opportunity:** The AGENCY will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The AGENCY will take affirmative action to insure that applicants for employment are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions will include, but not be limited to the following: employment; upgrading; demotion; transfer; recruitment; 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 USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any and all AGENCY materials for the purpose of monitoring the AGENCY'S compliance with the provisions of this section.
- H. **Title VI – Civil Rights Act of 1964:** The AGENCY will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d.)et seq.), the regulations of USDOT issued thereunder (49 CFR, Subtitle A, Part 21), and the assurance by the AGENCY pursuant thereto. Furthermore, the STATE and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any and all AGENCY materials which will permit them to monitor the AGENCY for compliance with the provisions of this section.

- I. **Prohibited Interest:** No member, officer, or employee of the AGENCY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- J. **Americans with Disabilities Act:** The AGENCY will comply with all requirements of The Americans with Disabilities Act of 1990 (ADA).
- K. **Arbitration:** Following the utilization of voluntary alternative dispute resolution, if any dispute should remain, then the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.
- L. **Permission to Start Work:** The AGENCY will not proceed with the project work until the STATE gives written authorization for the AGENCY to proceed.
- M. **Restrictions on Lobbying:** The prospective participant/recipient, by causing the execution of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under 31 U. S. C. §1352 and the person signing same for and on behalf of the prospective participant/recipient that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of 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 31 U.S.C. § 1352, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under 31 U.S.C. § 1352, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, and that all such subrecipients shall certify and disclose accordingly.

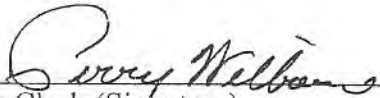
- N. Other Applicable Regulations:** The AGENCY will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 U.S.C. § 1857(h) as amended by 42 U.S.C. § 7401, et seq., Section 508 of the Federal Water Pollution Control Act, 33 U.S.C. § 1368, Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- O. Subcontracts:** The AGENCY will not enter into any subcontract 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.
- P. Exhibits M and N** are hereby attached to and made a part of this Agreement.

- Q. **Agreement Change:** The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- R. **Drug Free Workplace Act of 1988:** The AGENCY 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.
- S. **Expiration:** This Agreement shall become null and void on 09/30/2010, as to any work provided herein which has not been authorized, unless otherwise terminated by either party upon the delivery of the thirty (30) day notice of termination. The Agency agrees that the State may unilaterally extend the time of the agreement.
- T. **7/24<sup>th</sup> Law:** Nothing shall be construed under the terms of this Agreement by the AGENCY or the STATE that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

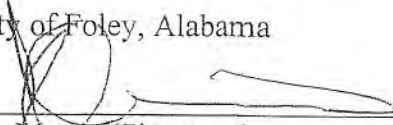


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

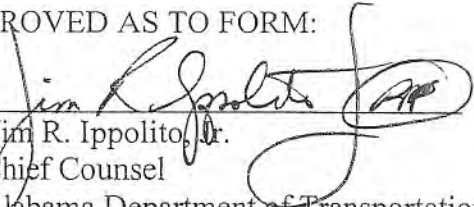
By:   
City Clerk (Signature)

Perry Wilbourne  
Type Name of Clerk

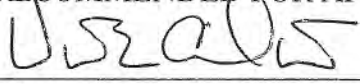
City of Foley, Alabama  
By:   
As Mayor (Signature)

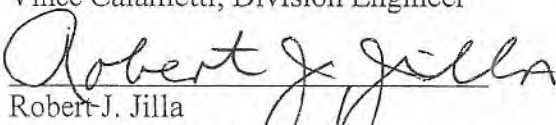
John E. Koniar  
Type Name of Mayor

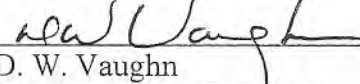
APPROVED AS TO FORM:

By:   
Jim R. Ippolito, Jr.  
Chief Counsel  
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

  
Vince Calametti, Division Engineer

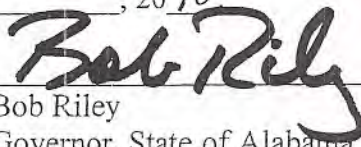
  
Robert J. Jilla  
Multimodal Transportation Engineer

  
D. W. Vaughn  
Chief Engineer/Deputy Director

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

  
D. J. McInnes, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this 2<sup>nd</sup> day of July, 2010.

  
Bob Riley  
Governor, State of Alabama

7/18/90

**EXHIBIT M**

**CERTIFICATION**

This certification is applicable to the instrument to which it is attached when directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress 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.

7/1/02

## **EXHIBIT N**

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

### TERMINATION DUE TO INSUFFICIENT FUNDS

- 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.

### MEDIATION CLAUSE FOR STATE CONTRACTS

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative hearings or where appropriate, private mediators.

**RESOLUTION NO. 3863-09**  
**ACCEPTS SAFE ROUTES TO SCHOOL GRANT**

WHEREAS, the Foley City Council adopted Resolution No. 3567-08 approving the "Safe Routes to Schools" grant application for purchasing Solar LED pedestrian signs to assist students walking from three alternate drop-off locations, and

WHEREAS, the grant application did not require any matching funds.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Accepts ALDOT's "Safe Routes to School" grant funds in the amount of \$167,610 for the installation of solar speed limit signs, radar feedback signs, traffic control signs, and creation of an alternate drop-off site in the City to encourage bicycling and walking at schools in Foley.

SECTION 2: The City understands that no work can proceed without the "Notice to Proceed" from ALDOT and City Engineer Butch Stokes will be the Grant Manager on this project.

SECTION 3: Amends the FY10 Budget accordingly.

SECTION 4: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, ADOPTED AND APPROVED THIS 5th day of October 2009.

