



JOINT AGREEMENT

AMONG

BIRMINGHAM MPO,

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY,

AND THE

STATE OF ALABAMA

RELATIVE TO

ALABAMA PERFORMANCE MANAGEMENT
23 CFR 450.314(h)

FOR

TRANSPORTATION PERFORMANCE DATA SHARING
AND COORDINATION

Performance 9-15-22
SPR-PART 3-PLBH(022)
UT-73870

ALABAMA PERFORMANCE MANAGEMENT AGREEMENT

23 CFR 450.314(h)

THIS AGREEMENT is made and entered into by and among the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE, the Birmingham MPO, hereinafter referred to as MPO, and the Birmingham-Jefferson County Transit Authority, hereinafter referred to as TRANSIT AGENCY.

WHEREAS, the United States Department of Transportation promulgated transportation planning regulations in 23 CFR 450.314, and

WHEREAS, the MPO, the STATE, and the TRANSIT AGENCY are required by 23 CFR 450.314 to cooperatively determine their mutual responsibilities in carrying out the performance-based planning and programming requirements established by federal law, and

WHEREAS, 23 CFR 450.314(h) requires that MPO, the STATE, and the TRANSIT AGENCY shall jointly agree upon and develop specific written procedures for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO, and the collection of data for the State asset management plan for the National Highway System (NHS).

NOW THEREFORE, BE IT RESOLVED that the parties do hereby agree to adhere to the following coordination mechanisms to meet performance-based planning and programming requirements for highways in accordance with 23 CFR 450.314(h) and established federal guidance.

1. Development of transportation performance data:
 - A. The STATE will collect data used in developing statewide targets to meet the federal performance management requirements for highways¹ to include the following:
 - i. Targets for assessing the **Highway Safety Improvement Program (PM1)** for the following measures²:
 - a. Number of fatalities
 - b. Rate of fatalities per 100 million Vehicle Miles Traveled (VMT)
 - c. Number of serious injuries
 - d. Rate of serious injuries per 100 million VMT
 - e. Number of combined non-motorized fatalities and non-motorized serious injuries
 - ii. Targets for assessing **Pavement and Bridge Condition for the National Highway Performance Program (PM2)** for the following measures:
 - a. Percentage of pavements on the Interstate System in Good condition
 - b. Percentage of pavements on the Interstate System in Poor condition
 - c. Percentage of pavements on the NHS (excluding the Interstate System) in Good condition
 - d. Percentage of pavements on the NHS (excluding the Interstate System) in Poor condition
 - e. Percentage of NHS bridge deck area classified in Good condition
 - f. Percentage of NHS bridge deck area classified in Poor condition

¹ 23 CFR Part 490, National Performance Management Measures

² PM1/Safety performance measures and targets are applicable to all public roads regardless of ownership or functional classification; 23 CFR Part 924

- iii. Targets for assessing performance of the **National Highway System, Freight Movement on the Interstate System and Congestion Mitigation and Air Quality Improvement Program (PM3)** for the following performance measures:
 - a. Percent of Person-Miles traveled on the Interstate System that are Reliable
 - b. Percent of Person-Miles traveled in the Non-Interstate System that are Reliable
 - c. Percentage of the Interstate System Mileage providing Reliable Truck Travel Times
 - d. Annual hours of Peak-Hour Excessive Delay Per Capita
 - e. Percent of Non-Single-Occupant-Vehicle (SOV) Travel
 - f. Total Emissions Reduction

- iv. Targets for assessing performance of **the Transit Asset Management (TAM) Plan** for the following performance measures³:
 - a. Asset Category: Rolling Stock (All revenue vehicles)
 - Age- % of revenue vehicles within an asset class that have met or exceed their Useful Life Benchmark
 - b. Asset Category: Equipment (Non-revenue vehicles)
 - Age - % of revenue vehicles within an asset class that have met or exceed their Useful Life Benchmark
 - c. Asset Category: Facilities (the STATE will only rate FTA funded facilities)
 - Condition - % of facilities with a condition rating below 3.0 on an FTA Transit Economic Requirement Modal (TERM) Scale
 - d. The TAM final rule requires that all TRANSIT AGENCIES that are recipients and sub recipients of 49 USC Charter 53 funds to develop a TAM Plan.
 - e. TRANSIT AGENCIES that are a part of the Group (Statewide) TAM Plan will provide transit data by asset class (both revenue and non-revenue) and facilities conditions on an annual basis to the STATE.
 - f. TRANSIT AGENCIES and MPOs developing their own TAM plan will provide their targets and the final report to the STATE.
 - g. The STATE and the MPO are required to integrate the TRANSIT AGENCY performance targets into the planning documents including Statewide Transportation Improvement Plan (STIP) and Transportation Improvement Plan (TIP), respectively, and the Statewide Long-Range Plan (LRP) and Metropolitan Transportation Plan (MTP).

- v. Targets for assessing performance of **the Public Transportation Agency Safety Plan (PTASP)** for the following performance measures (applicable to demand response/fixed route services)⁴:
 - a. Fatality by Mode
 - Fatality Total
 - Rate of Fatalities (per vehicle revenue mile)
 - b. Injuries by Mode
 - Injuries Total
 - Rate of Injuries (per vehicle revenue mile)
 - c. Safety Events by Mode
 - Safety Event Total
 - Rate of Safety Events (per vehicle revenue mile)
 - d. System Reliability by Mode
 - Miles between major mechanical failures
 - e. The PTASP final rule requires that TRANSIT AGENCIES that are recipients and sub recipients of Urbanized Area Formula Grant Program under 49 USC 5307 develop safety performance targets within their Agency Safety Plan (ASP). Each TRANSIT

³ 49 CFR 625 and 630

⁴ 49 CFR Part 673

AGENCY must provide the STATE and its respective MPOs its safety performance targets to assist the STATE and MPOs with capital program planning process.

- f. STATE and MPOs are required to integrate the TRANSIT AGENCY performance targets into the planning documents including Statewide Transportation Improvement Plan (STIP) and Transportation Improvement Plan (TIP), respectively, and the Statewide Long-Range Plan (LRP) and Metropolitan Transportation Plan (MTP).
- B. Those MPOs that are currently designated as being in non-attainment or maintenance for air quality⁵ will coordinate with the STATE on the collection and provision of data used in developing targets for the Congestion Mitigation and Air Quality (CMAQ) traffic congestion measures (Annual Hours of Peak-Hour Excessive Delay per capita and Percent Non-SOV Travel) and the Total Emission Reduction Measures.
 - C. The STATE will make available, by request, the transportation performance data used in developing statewide highway and transit targets to the MPO and the TRANSIT AGENCY.
 - i. The STATE will make available the transportation performance data to the MPO and the TRANSIT AGENCY, by request only, when a statewide target is established or revised, per Section 2 of this agreement.
 - ii. Where possible and practicable, the STATE will make available performance data for each MPO planning area for purposes of tracking progress towards attainment of performance outcomes for each MPO Region's required System Performance Reports, per Section 4 of this agreement.
 - iii. Notwithstanding any provision of this Agreement to the contrary, the parties agree that any safety data or information protected by 23 U.S.C. §§ 148 (h)(4) and 409 and State law shall be confidential. The parties agree that all crash and traffic data used by the parties for or in transportation improvement plans, highway safety improvement programs and strategic highway safety plans will not be disclosed to third parties without the express written permission of the STATE. The parties agree that the data shall not be referenced, disclosed, discussed, or otherwise made public. The provision of the above data by the STATE shall not be considered a waiver of 23 U.S.C. §§ 148 (h)(4) and 409 or State precedent. Upon execution of this Agreement, the parties and their agents, servants, officers, officials, and employees in both their official and individual capacities, agree that the data provided pursuant to the above referenced request shall not be discussed, disclosed, used, published, or released without prior written consent of the STATE. If the data in any form should be disclosed, released, or published in any manner without the consent of the STATE or should an attempt be made to use the data in an action for damages against the parties, their officials, or employees, then access to the data shall terminate immediately. The STATE expressly reserves its right under 23 U.S.C. §§ 148 (h)(4) and 409 and State precedent to object to the use of the data and any opinions drawn from the data and to recover damages caused by the improper and unauthorized release of the data.
 - iv. The MPO and the TRANSIT AGENCY shall defend, indemnify and hold harmless the STATE of Alabama, the Alabama Department of Transportation, its officials and employees, both in their official and individual capacities, and their agents and servants from and against all claims, damages, losses or expenses thereof, including but not limited to reasonable attorneys' fees, arising out of or resulting from faults, errors, mistakes, omissions, misconduct or negligent acts or omissions of the MPO or the TRANSIT AGENCY, its subconsultants, agents, or employees caused as a result of or related to the service or work provided under this AGREEMENT. The MPO and the

⁵ As determined through annual Applicability Determination: CMAQ Traffic Congestion and CMAP On-Road Mobile Source Emissions Measures, 23 CFR Part 490

TRANSIT AGENCY shall ensure that its subconsultants, agents, or employees possess the experience, knowledge, and character necessary to qualify them to perform the particular duties assigned by The MPO and the TRANSIT AGENCY. This indemnity is not limited by any insurance coverage required by this AGREEMENT.

- v. By entering into this agreement, the MPO and the TRANSIT AGENCY are not an agent of the STATE, its officers, employees, agents or assigns. The MPO and TRANSIT AGENCY are independent entities from the STATE and nothing in this agreement creates an agency relationship between the parties.
- D. If the MPO and/or the TRANSIT AGENCY chooses to develop its own target for any highway and/or transit measure, it will collect and provide the STATE with the performance target(s) and any supplemental data used in association with the MPO or TRANSIT AGENCY target setting process.

2. Selection of transportation performance targets

- A. The STATE, the MPO and the TRANSIT AGENCY will establish or revise performance targets in coordination with each other.
 - i. Coordination may include the following opportunities, as deemed appropriate, for each performance measure and target: in-person, meeting, webinars, conference calls, and email/written communication. All parties agree that email communications shall be considered written notice for all portions of this agreement.
 - ii. The MPO and the TRANSIT AGENCY will be given an opportunity to provide comment on the STATE targets no less than 30-days prior to the STATE's establishment or revision of highway and/or transit targets.
 - iii. If an MPO and/or the TRANSIT AGENCY chooses to set its own target, the MPO and/or the TRANSIT AGENCY will develop the target(s) in coordination with the STATE. The MPO and/or the TRANSIT AGENCY will provide the STATE with the opportunity to comment on performance targets no less than 30-days prior to adoption of targets.
- B. The STATE will select statewide performance targets to meet the federal performance management requirements for highways and transit.
 - i. The STATE will provide written notice to the MPO and TRANSIT AGENCY when the STATE selects a target. This notice will provide the target and the date the STATE set the target, which will begin the 180-day time-period in which the MPO and /or the TRANSIT AGENCY (as applicable) must set a corresponding performance target.
 - ii. If the MPO and/or the TRANSIT AGENCY (as applicable) chooses to support the statewide target, the MPO and the TRANSIT AGENCY will provide written documentation to STATE that the MPO and the TRANSIT AGENCY agrees to plan and program projects that will contribute toward the achievement of the statewide highway performance target.
 - iii. If the MPO or the TRANSIT AGENCY chooses to set its own target, the MPO or TRANSIT AGENCY will provide the STATE written documentation that includes the target and the date the MPO or the TRANSIT AGENCY plans to adopt. Documentation will be provided no less than 30-days prior to the MPO or the TRANSIT AGENCY adoption of target (consistent with Section 2a).
- C. Those MPOs currently in non-attainment or maintenance for air quality and the STATE will coordinate to select single, unified targets for the CMAQ traffic congestion measures (Annual Hours of Peak-Hour Excessive Delay Per Capita and Percent of Non-SOV Travel) and to

select mobile source emission reduction targets for their respective non- attainment areas of ozone.

3. Reporting of performance targets

A. The STATE will report all performance targets to the Federal Highway Administration (FHWA) as applicable and in accordance with 23 CFR Part 490 and Federal Transit Administration (FTA) as applicable and in accordance with 49 CFR Part 625. Where possible and practicable, the STATE will provide information to the MPOs and TRANSIT AGENCY on the performance of targets.

i. Through the Highway Safety Improvement Program Annual Report for PM1 measures.

ii. Through the required Baseline, Mid and Full Performance Reports and the Transportation Asset Management Plan (TAMP) for PM2 measures.

iii. Through the required Baseline, Mid and Full Performance Period Reports for PM3 measures, to include CMAQ Performance Plans where applicable.

iv. Through TRANSIT AGENCY's self-certification process, National Transit Database (NTD) annual submissions, and FTA's Review Process for the TAM and PTASP.

B. The STATE will include a description of performance measures and performance targets, along with a System Performance Report, in accordance with 23 CFR 450.216(f) in any statewide transportation plan amended or adopted after May 27, 2018, and in accordance with 23 CFR 450.218(q) in any State Transportation Improvement Program adopted or amended after May 27, 2018.

4. Reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO.

A. The MPO will include a description of performance measures and performance targets, along with a System Performance Report, in accordance with 23 CFR 450.324(f) (3-4) in any Metropolitan Transportation Plan amended or adopted after May 27, 2018, and in accordance with 23 CFR 450.326(d) in any Transportation Improvement Program amended or adopted after May 27, 2018, for PM1 measures.

B. The MPO will include a description of performance measures and performance targets, along with a System Performance Report, in accordance with 23 CFR 450.324(f)(3-4) in any Metropolitan Transportation Plan amended or adopted after May 20, 2019, and in accordance with 23 CFR 450.326(d) in any Transportation Improvement Program amended or adopted after May 20, 2019, for PM2 and PM3 measures.

C. The MPO will include a description of performance measures and performance targets, along with a System Performance Report, in accordance with 23 CFR 450.324(f)(3-4) in any Metropolitan Transportation Plan amended or adopted after, and in accordance with 23 CFR 450.326(d) in any Transportation Improvement Program amended or adopted after October 1, 2018, for TAM.

D. The MPO will include a description of performance measures and performance targets, along with a System Performance Report, in accordance with 23 CFR 450.324(f)(3-4) in any Metropolitan Transportation Plan amended or adopted after July 20, 2021, for PTASP.

5. A collection of data for the State Asset Management plans for the NHS:

A. The STATE will be responsible for collecting pavement condition data for the NHS. This includes NHS roads that are not on the State Highway System, but instead are under the ownership of local jurisdictions if such roads exist.

6. This agreement will be periodically review and will be updated and/or terminate as to the applicable federal law.

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

ATTEST:

By: Laurel Land

Title: SENIOR PLANNER

BIRMINGHAM MPO

By: [Signature]

Title: EXECUTIVE DIRECTOR

ATTEST:

By: [Signature]

Title: PLANNING DIRECTOR

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

By: [Signature]

Title: EXECUTIVE DIRECTOR/CEO

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

By: William F. Patty

William F. Patty
Chief Counsel, Legal Bureau

RECOMMENDED FOR APPROVAL:

[Signature]

Bradley B. Lindsey, P.E.
State Local Transportation Engineer

[Signature]

Edward N. Austin, P.E.
Chief Engineer

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

[Signature]

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 16 day of November, 2022.

[Signature]

Kay Ivey
Governor, State of Alabama

22-01886

ALABAMA DEPARTMENT OF TRANSPORTATION
LOCAL TRANSPORTATION BUREAU
ROUTING SLIP

Telephone: 334-242-6028

Fax: 334-353-6550

DATE: September 21, 2022

TO: Edward N. Austin, P.E.
Chief Engineer

* (2) Originals

FROM: Bradley B. Lindsey, P.E.
State Local Transportation Engineer

RE: MPO Performance Measures Agreement

ACTION TO BE TAKEN:

Execute and Return
 Signature/Approval

Approval & Forward for Director's Signature
 Approval & Forward for Chief Engineer's Signature

REMARKS:

MPO Performance Measures Agreement:
SPR-PART3-PLBH(022) UT- 100073870

Performance Measures Agreement for the Birmingham MPO

Legal:22-01886



* Please sign & Forward to the Director's & the Governor's Office for Signatures.

* After the Governor's signature, please return to Local Transportation (Attn: Nancy Koontz) for Distribution.