



ALABAMA DEPARTMENT OF TRANSPORTATION

FIFTH DIVISION
OFFICE OF THE DIVISION ENGINEER
2715 East Skyland Boulevard
P. O. Box 70070, Tuscaloosa, Alabama 35407
Telephone: 205-553-7030
Fax: 205-556-0900



Robert Bentley
Governor

John R. Cooper
Transportation
Director

May 24, 2012

Honorable Walt Maddox
Mayor, City of Tuscaloosa
P. O. Box 2089
Tuscaloosa, Alabama 35403

forward: Joe Robinson



Attention: Mr. Joe Robinson
City Engineer

Re: Utility and Construction Agreement
Project NH-0006(), Extending and Adding New Turn Lanes SR-6 (US-82)
McFarland Boulevard with the City of Tuscaloosa
Project Reference Numbers 100057925 and 100057926
Tuscaloosa County

Dear Mayor Maddox:

A copy of the fully executed Utility and Construction Agreement between the State of Alabama and the City of Tuscaloosa for the referenced project is included with this transmittal letter.

If you have questions, contact this office at (205) 554-3244.

Sincerely,

L. Dee Rowe
Division Engineer

David A. Kemp
Assistant Division Engineer

LDR/DAK/rajc
Attachments
cc: file

K-12-0660
AG# 8412

**AGREEMENT
FOR
UTILITY AND CONSTRUCTION**

**BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF TUSCALOOSA, ALABAMA**

**Project NH-0006 ()
Project Reference Number 100057925
Project Reference Number 100057926
Extending and Adding New Turn Lanes SR-6
(US-82) (McFarland Boulevard)
in the City of Tuscaloosa**

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 Tuscaloosa, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Tuscaloosa Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for extending and adding new turn lanes SR-6 (US-82) (McFarland Boulevard) in the City of Tuscaloosa.

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

- (1) This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in construction costs will be borne by the CITY. In the event of an underrun in construction costs, the amount of Federal Aid Funds will be 80 percent of eligible costs.
- (3) The Project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	Total Estimated <u>Cost</u>	Estimated Federal <u>Funds</u>	Estimated CITY <u>Funds</u>
Utilities	\$1,500,000	\$1,200,000	\$300,000
Construction, including engineering and inspection	<u>\$2,800,000</u>	<u>\$2,240,000</u>	<u>\$560,000</u>
TOTAL	\$4,300,000	\$3,440,000	\$860,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible 20 percent of the local match. Overruns will be financed at 80 percent Federal and 20 percent local match. The administrative cost will be a part of the Project cost.

- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (5) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved

which are eligible for STATE reimbursement or payment under state law will be considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.

(6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.

(7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract.

Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost. All required off-site testing shall be the responsibility of the Alabama Department of Transportation. All on-site engineering, inspection, and testing (including obtaining and delivery of test specimens to the Alabama Department of Transportation testing facility) shall be the responsibility of the CITY or its designated representative.

(8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.

(9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- (10) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (11) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement. By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (12) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (13) This Agreement shall terminate on January 17, 2015, as to any work provided herein for which funding has not been authorized, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination. The CITY agrees that the STATE may unilaterally extend the time of the Agreement.
- (14) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
- (15) Exhibits M and N are attached and hereby made a part of this Agreement.

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

SEAL

ATTEST:

Tracy B. Croom
City Clerk (Signature)

TRACY B. Croom
Type name of Clerk

CITY OF TUSCALOOSA, ALABAMA

BY: Walter Maddox
Mayor (Signature)

Walter Maddox
Type name of Mayor

APPROVED AS TO FORM:

BY: Jim R. Ippolito, Jr. by AG
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

L. Dee Rowe
Division Engineer, L. Dee Rowe

Robert J. Jilla
Multimodal Transportation Planning Engineer
Robert J. Jilla

D. W. Vaughn
Chief Engineer, D. W. Vaughn

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

John R. Cooper
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this 8th day of May, 2012.

Robert Bentley
GOVERNOR OF ALABAMA, ROBERT BENTLEY

7/18/90

Exhibit M

CERTIFICATION

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

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

(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 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, 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.

07/01/2002

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

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.

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

ADR CLAUSE

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 Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER _____

BE IT RESOLVED, by the City Council of the City of Tuscaloosa, Alabama as follows:

1. That the City enter into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Utility and Construction Agreement for Project NH-0006 (), Project Reference Numbers 100057925 and 100057926 for extending and adding new turn lanes SR-6 (US-82) (McFarland Boulevard) in the City of Tuscaloosa; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf;
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted, and approved this ____ day of _____, 20 ____ .

ATTESTED:

City Clerk

Mayor

I, the undersigned qualified and acting clerk of the City of Tuscaloosa, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the ____ day of _____, 20____, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the ____ day of _____, 20____.

City Clerk

APPROVED AS TO FORM

DM
Office of the City Attorney

Prepared By: GB
Requested: Projects Cmte
Presentation on: 3-27-12
Suspension of Rules: No

RESOLUTION

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A UTILITY AND CONSTRUCTION AGREEMENT FOR PROJECT NH-00060, PROJECT REFERENCE NUMBER 100057923, WITH THE STATE OF ALABAMA FOR IMPROVEMENTS TO MCFARLAND BOULEVARD (A12-0327)

100057925
100057924 CN

BE IT RESOLVED BY THE CITY COUNCIL that the City enter into a utility and construction agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for Project NH-00060, Project Reference Number 100057923 with the State of Alabama for extending and adding new turn lanes to SR-6 (US-82) (McFarland Boulevard) in the City of Tuscaloosa, and that the City Clerk is to attest the same.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted, and approved this 27th day of March, 2012.

ATTESTED:
Tracy B. Croom
Tracy Croom, City Clerk

Walt Maddox
Walt Maddox, Mayor

I, the undersigned qualified and acting clerk of the City of Tuscaloosa, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 27th day of March, 2012, and that such resolution is on file in the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 29th day of March, 2012.

Tracy B. Croom
Tracy Croom

FUNDING REQUIRED: Yes No

By: _____
Finance Director

COUNCIL ACTION

Resolution _____ ✓
Ordinance _____
Introduced _____
Passed 3-27-12
2nd Reading _____
Unanimous _____
Failed _____
Tabled _____
Amended _____
Comments: _____