

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Apr 24, 2014

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Agreement between the City and the State of Alabama.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Agreement for Preliminary Engineering, Right-of-way Acquisition, Utility and Construction between the State of Alabama and the City of Huntsville, Alabama.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

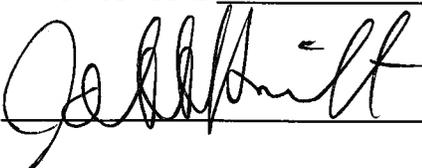
Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 4/23/14

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the State of Alabama and the City of Huntsville, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "AGREEMENT FOR PRELIMINARY ENGINEERING, RIGHT-OF-WAY ACQUISITION, UTILITY AND CONSTRUCTION BETWEEN THE STATE OF ALABAMA AND THE CITY OF HUNTSVILLE, ALABAMA," consisting of fourteen (14) pages including Exhibits L, M and N, and the date of April 24, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of April, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of April, 2014.

Mayor of the City of
Huntsville, Alabama

**AGREEMENT
FOR
PRELIMINARY ENGINEERING, RIGHT-OF-WAY ACQUISITION,
UTILITY AND CONSTRUCTION**

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

THIS AGREEMENT is made and entered into by and between the State of Alabama, (acting by and through the Alabama Department of Transportation), hereinafter referred to as STATE; and the City of Huntsville, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Huntsville 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 preliminary design engineering, right-of-way acquisition, utilities and construction program for the following Projects listed in this Agreement in the City of Huntsville:

US 72 East: Additional lane (westbound only) from Maysville Road to Shields Road, includes turn lane and crossover modifications.

Preliminary Engineering	Additional lane (westbound only) from Maysville Road to Shields Road, includes turn lane and crossover modifications.	Not eligible toward Project cost
Right-of-Way	Additional lane (westbound only) from Maysville Road to Shields Road, includes turn lane and crossover modifications.	Eligible toward Project cost
Utility	Additional lane (westbound only) from Maysville Road to Shields Road, includes turn lane and crossover modifications.	Eligible toward Project cost
Construction	Additional lane (westbound only) from Maysville Road to Shields Road, includes turn lane and crossover modifications.	Eligible toward Project cost

South Memorial Parkway – Martin Road/Byrd Springs/Lily Flagg, Frontage Roads and Mainline: Complete expressway between Whitesburg and Martin Road Interchanges with a new interchange at Byrd Springs and Lily Flagg and reconstruction of Martin Road Interchange.

Preliminary Engineering	Complete expressway between Whitesburg and Martin Road interchanges with a new interchange at Byrd Springs and Lily Flagg and reconstruction of Martin Road interchange.	Not eligible toward Project cost
Right-of-Way	Complete expressway between Whitesburg and Martin Road interchanges with a new interchange at Byrd Springs and Lily Flagg and reconstruction of Martin Road interchange.	Not eligible toward Project cost

Utility	Complete expressway between Whitesburg and Martin Road interchanges with a new interchange at Byrd Springs and Lily Flagg and reconstruction of Martin Road interchange.	Not eligible toward Project cost
Construction	Complete expressway between Whitesburg and Martin Road interchanges with a new interchange at Byrd Springs and Lily Flagg and reconstruction of Martin Road interchange.	Eligible toward Project cost

US 72 West: Comprehensive improvement plan for US 72 West from Providence Main Street to County Line Road. Includes widening to six (6) lanes, access management, and intersection improvements.

Preliminary Engineering	Comprehensive improvement plan for US 72 West from Providence Main Street to County Line Road. Includes widening to six (6) lanes, access management and intersection improvements. Ties to Madison ATRIP (non-eligible) project on US 72 West.	Eligible toward Project cost
Right-of-Way	Comprehensive improvement plan for US 72 West from Providence Main Street to County Line Road. Includes widening to six (6) lanes, access management and intersection improvements. Ties to Madison ATRIP (non-eligible) project on US 72 West.	Eligible toward Project cost
Utility	Comprehensive improvement plan for US 72 West from Providence Main Street to County Line Road. Includes widening to six (6) lanes,	Eligible toward Project cost

	access management and intersection improvements. Ties to Madison ATRIP (non-eligible) project on US 72 West.	
Construction	Comprehensive improvement plan for US 72 West from Providence Main Street to County Line Road. Includes widening to six (6) lanes, access management and intersection improvements. Ties to Madison ATRIP (non-eligible) project on US 72 West.	Eligible toward Project cost

North Memorial Parkway – Mastin Lake: Improvements from Sparkman Drive to north of Mastin Lake Road, including an interchange at Mastin Lake Road.

Preliminary Engineering	Improvements from Sparkman Drive to north of Mastin Lake Road, including an interchange at Mastin Lake Road.	Not eligible toward Project cost
Right-of-Way	Improvements from Sparkman Drive to north of Mastin Lake Road, including an interchange at Mastin Lake Road.	Eligible toward Project cost
Utility	Improvements from Sparkman Drive to north of Mastin Lake Road, including an interchange at Mastin Lake Road.	Eligible toward Project cost
Construction	Improvements from Sparkman Drive to north of Mastin Lake Road, including an interchange at Mastin Lake Road.	Eligible toward Project cost

South Memorial Parkway – Weatherly Road to Hobbs Road: Access management and intersection improvements.

Preliminary Engineering	Access management and intersection improvements.	Eligible toward Project cost
Right-of-Way	Access management and intersection improvements.	Eligible toward Project cost
Utility	Access management and intersection improvements.	Eligible toward Project cost
Construction	Access management and intersection improvements.	Eligible toward Project cost

Huntsville Northern Bypass from near Pulaski Pike to just east of US 231 North:
Construction of the service roads only from Pulaski Pike to US 231 to include intersection improvement at US 231.

Preliminary Engineering	Construction of the service roads only from Pulaski Pike to US 231 to include intersection improvements at US 231.	Not eligible toward Project cost
Right-of-Way	Construction of the service roads only from Pulaski Pike to US 231 to include intersection improvements at US 231.	Eligible toward Project cost
Utility	Construction of the service roads only from Pulaski Pike to US 231 to include intersection improvements at US 231.	Eligible toward Project cost
Construction	Construction of the service roads only from Pulaski Pike to US 231 to include intersection improvements at US 231.	Eligible toward Project cost

The CITY will be responsible for all new phases of work on the two Projects listed below. Any costs eligible for any new phase of these two Projects will be allowed to be charged against the

CITY's share of the Project cost (\$125,000,000) after the execution of this Agreement. Any charges made prior to the execution of this Agreement will not be eligible toward Project cost for any phase of work performed by the CITY.

US 72 Epworth Connector: Connect Epworth Drive to Maysville Road and close the opening on US-72 at Epworth. The legal issues concerning the Epworth Drive connector road and access from High Mountain Road to US 72, including the related consent judgment, recorded in Book 1064, Page 0368 of the Madison County Probate Court, shall be completely resolved with all parties of interest by the State of Alabama before the CITY shall move forward with (1) awarding a contract for or (2) beginning any construction in that area. These legal issues shall be resolved at no cost to the CITY and the costs of resolving these issues shall not be paid for nor diminish in any way, the STATE and CITY funds set forth in Paragraph (2) in this Agreement in the total amount of \$250,000,000 funded for construction pursuant to this Agreement.

Preliminary Engineering	Connect Epworth Drive to Maysville Road and close the opening on US 72 at Epworth.	Eligible toward Project cost
Right-of-Way	Connect Epworth Drive to Maysville Road and close the opening on US 72 at Epworth.	Eligible toward Project cost
Utility	Connect Epworth Drive to Maysville Road and close the opening on US 72 at Epworth.	Eligible toward Project cost
Construction	Connect Epworth Drive to Maysville Road and close the opening on US 72 at Epworth.	Eligible toward Project cost

Cecil Ashburn Boulevard: Improvements at various locations between Carl T. Jones Drive and US 431.

Preliminary Engineering	Improvements at various locations between Carl T. Jones Drive and US 431.	Eligible toward Project cost
Right-of-Way	Improvements at various locations between Carl T. Jones Drive and US 431.	Eligible toward Project cost
Utility	Improvements at various locations between Carl T. Jones Drive and US 431.	Eligible toward Project cost
Construction	Improvements at various locations between Carl T. Jones Drive and US 431.	Eligible toward Project cost

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

- (1) The STATE will perform or have performed all services required to fulfill the purposes of this Agreement, unless noted otherwise in this Agreement.
- (2) The STATE will be responsible for 50 percent of the total Project cost and the CITY will be responsible for 50 percent of the total Project cost including all direct and indirect costs. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated Cost</u>	<u>Estimated STATE Cost</u>	<u>Estimated CITY Cost</u>
Preliminary Engineering, Right-of-Way, Utility, and Construction, including engineering and inspection	<u>\$250,000,000</u>	<u>\$125,000,000</u>	<u>\$125,000,000</u>
TOTAL	\$250,000,000	\$125,000,000	\$125,000,000

Any Project requests by the CITY that are not eligible for Federal Aid will be the responsibility of the CITY and will be charged against the CITY's \$125,000,000.

- (3) It is understood by the STATE and the CITY that this is a 5-year Project funding plan for the agreed-upon projects. Upon execution of this Agreement, the CITY agrees to an annual payment schedule with the STATE. In Fiscal Year 2015, the CITY will be invoiced for their specified share of the first two (2) years of Project funding, \$50,000,000, less the value of any estimated Project cost budgeted by the CITY in Fiscal Years 2014 and 2015 for the US 72 Epworth Connector Project and the Cecil Ashburn Boulevard Project, which the CITY shall pay to the STATE not later than September 20, 2015. In Fiscal Years 2016, 2017, and 2018, the CITY will be invoiced for their specified share of annual Project funding

\$25,000,000, less the value of any estimated Project cost budgeted by the CITY in Fiscal Years 2016, 2017, and 2018 for the US 72 Epworth Connector Project and the Cecil Ashburn Boulevard Project, which the CITY shall pay to the STATE not later than September 20th of the fiscal year to which the invoice pertains. The CITY will provide documentation, such as authorized budget resolutions, for any estimated Project cost budgeted by the CITY in a given fiscal year to support the reduction in the required annual payment remitted to the STATE.

- (4) All financial participation of this Agreement is based on supporting financial documentation provided by the CITY and the STATE. Each party shall periodically provide information to the other parties concerning the costs incurred on each Project covered by this Agreement. All costs must be supported by appropriate financial documents that comply with all laws, rules, and regulations concerning the expenditure of CITY, STATE, and Federal funds.
- (5) A final review will be made of all Project records after the completion of the Project. A final financial settlement will be made between the parties as reflected by the final review and this Agreement. Any overruns of the Total Estimated Cost of \$250,000,000 will be the responsibility of the CITY unless agreed upon by both parties. Any underruns of the Total Estimated Cost of \$250,000,000 will be shared by the CITY and STATE on an equal basis.
- (6) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (7) Additional Projects or Project phases may be added to this Agreement by supplemental agreement if Project funds are available for the additional Projects

or Project phases. The CITY and STATE must approve any additional Projects or Project phases before they are eligible for financial participation and supplemental agreement. Any additional Project phases of this Agreement may not incur costs that exceed the available Project funds. All Project phases charged to this Project in the event of overruns, which will be 50 percent CITY and 50 percent STATE, may not exceed the total Project cost of \$250,000,000 unless agreed upon by both parties.

- (8) With the exception of the legal issues addressed herein related to the US 72 Epworth Connector consent decree, to the extent permitted by law, and specifically subject to the limitations on damages applicable to municipal corporations under Alabama State Law, the CITY shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees, in both their official and individual capacities, from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of or resulting from work performed by the CITY, (2) the provision of any services or expenditure of funds required, authorized or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury to or destruction of tangible property (other than the work itself), including loss of use resulting therefrom, caused by the negligent, careless or unskillful acts of the CITY, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants or employees, or anyone for whose acts the CITY may be liable.

- (9) With the exception of the legal issues addressed herein related to the US 72 Epworth Connector consent decree, to the extent permitted by law, and specifically subject to the limitation on damages applicable to municipal corporations under Alabama State Law. The CITY shall be responsible for damages to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities, provided that such legal liability is directly related to the CITY's performance of this Agreement.
- (10) 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.
- (11) The law requires that this Agreement shall terminate on January 17, 2015, as to any work provided herein for which funding has not been authorized, so as not to bind subsequent Administrations. The STATE may unilaterally extend the time of the Agreement.
- (12) 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).
- (13) Exhibits L, 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 the approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF HUNTSVILLE, ALABAMA

City Clerk (Signature)

BY: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

APPROVED AS TO FORM:

BY: Jim Ippolito by J.T.
Chief Counsel, Jim Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

Division Engineer, Johnny L. Harris

Multimodal Transportation Engineer,
Robert J. Jilla

Chief Engineer, Ronald L. Baldwin, P. E.

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

Transportation Director, John R. Cooper

The foregoing agreement is hereby approved by the Governor of the State of Alabama this ____ day
of _____, 20 ____.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

Exhibit L

Projected Fiscal Year	Project Name	Description	Project Lead	Estimated Project Cost	Fiscal Year Balance
FY 2014 Allocation					\$50,000,000
2014	US 72 East at Moores Mill Road	Additional lane WB from Moores Mill Road to Sparkman Drive and intersection improvements at Moores Mill/US 72 and Shields/US 72	ALDOT	\$9,000,000	\$41,000,000
2014	Epworth Connector	Connecting Epworth Road to Maysville Road to include signal improvements at Maysville Road	City	\$5,000,000	\$36,000,000
FY 2015 Allocation					\$50,000,000
2015	US 231 at Martin Road and Lily Flagg	Frontage roads and main line with overpasses	ALDOT	\$63,500,000	\$22,500,000
FY 2016 Allocation					\$50,000,000
2016	US 72 West between Providence Main and County Line Road	Add one lane in each direction with access management and signal modifications. City of Madison (<i>ATRIP Project</i>) responsible for improvements from Hughes Road to Balch Road	ALDOT	\$30,000,000	\$42,500,000
2016	US 231 at Mastin Lake Road	Interchange and grade separation	ALDOT	\$34,000,000	\$8,500,000
FY 2017 Allocation					\$50,000,000
2017	US 231 between Weatherly Road and Hobbs Road	Access and intersection improvements	ALDOT	\$15,000,000	\$43,500,000
2017	Huntsville Northern Bypass from near Pulaski Pike to just east of US 231 North	Huntsville Northern Bypass from near Pulaski Pike to just east of US 231 North. Construction of the service roads only from Pulaski Pike to US 231 to include intersection improvement at US 231	City	\$30,000,000	\$13,500,000
2017	Cecil Ashburn	Pending: 5-lane section between Old Big Cove and US 431 to include additional lane to Four Mile Post	City	\$15,000,000	-\$1,500,000
FY 2018 Allocation					\$50,000,000
TOTAL AGREEMENT ESTIMATED COST				\$201,500,000	
TOTAL ESTIMATED AGREEMENT BALANCE FOR ADDITIONAL PROJECT(S)/OVERRUNS					\$48,500,000

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 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/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 pro ration 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 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.