CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: ~~Mar 26, 2015~~ 4-9-15

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Resolution authorizing the Mayor to enter into an Agreement for a Transportation Alternatives Project Between the State of Alabama and the City of Huntsville regarding Project No. TAPHV-TA14 (952); Aldridge Creek Greenway Extension

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Agreement for a Transportation Alternatives Project Between the State of Alabama and the City of Huntsville regarding Project No. TAPHV-TA14 (952); Aldridge Creek Greenway Extension

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.

The total estimated cost of construction is $1,020,741,25. Project costs will be funded with 80 percent federal funds and with the COH providing a 20 percent match (estimated match: $204,148.25).

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: _____

Date: 4-2-15

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Planning**

Council Meeting Date: ~~3/26/2015~~ 4-9-15

Department Contact: **Kimberly Gosa**

Phone # **ext. 5115**

Contract or Agreement: **Agreement**

Document Name: **Agreement for a Transportation Alternatives Project re. Aldridge Creek Extension**

City Obligation Amount: **$204,148.25**

Total Project Budget: **$1,020,741.25**

Uncommitted Account Balance:

Account Number: **23-5265-0811-8422**

Procurement Agreements

Select...	**Select...**

Grant-Funded Agreements

Select...	**Grant Name:**

Department	Signature	Date
1) Originating		Ke Mar 15
2) Legal	Mary C. Cates	3/31/2015
3) Finance		4/1
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		4/2/15
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement with the State of Alabama, 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 a Transportation Alternatives Project Between the State of Alabama and the City of Huntsville; Aldridge Creek Greenway Extension; Project No.TAPHV-TA14(952)" consisting of fifteen (15) pages plus two (2) additional pages consisting of Exhibits M and N, and the date of April 9, 2015, 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 9th day of April, 2015

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

APPROVED this the 9th day of April, 2015

_____
Mayor of the City of Huntsville, Alabama

AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES PROJECT

BETWEEN THE STATE OF ALABAMA AND
THE CITY OF HUNTSVILLE

Madison County

Aldridge Creek Greenway Extension

Project No. TAPHV-TA14(952)

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 Huntsville, Alabama, hereinafter referred to as SPONSOR, in cooperation with the U. S. Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA, and

WHEREAS, legislation enacted by the U. S. Congress authorizing the establishment of a Transportation Alternatives Program, and

WHEREAS, said legislation requires that two percent of the "Moving Ahead for Progress in the 21st Century Act" or the "MAP-21" funds be available for transportation alternatives activities, and

WHEREAS, transportation alternatives activities are defined as…

1. Construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian lighting, downtown streetscape (combination of sidewalks, pedestrian lighting and landscaping), and other transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.

2. Construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.

April 9, 2015

President or President
Pro Tem of City Council

Date

3. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users.
4. Construction of turnouts, overlooks, and viewing areas.

5. Community improvement activities, including-
   i. inventory, control, or removal of outdoor advertising;
   ii. historic preservation and rehabilitation of historic transportation facilities;
   iii. vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
   iv. archaeological activities relating to impacts from implementation of a transportation project eligible under Title 23.

6. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-
   i. address storm water management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff.
   ii. reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

WHEREAS, the SPONSOR 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 SPONSOR to participate in a transportation alternatives program, as reflected by such project application.

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

PART TWO (2): PROJECT PROVISIONS

A. **Project Description:** The SPONSOR will undertake a transportation alternatives project in accordance with this Agreement, plans approved by the STATE and the requirements, provisions, terms, and conditions of the project application, including the documents relating thereto, developed by the SPONSOR and approved by the STATE. This application, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the SPONSOR 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 SPONSOR. The SPONSOR shall have no more than two (2) years from the date of execution of this agreement to have the project authorized for construction, or to begin right-of-way acquisition, 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 SPONSOR in writing that the project is terminated.

C. **Project Funding:** It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program funds as authorized under MAP-21 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 SPONSOR prior to accomplishment of work for which reimbursement is requested. Cost for the project will be financed, when eligible for federal participation, on the basis of 80 percent federal transportation alternatives funds and 20 percent SPONSOR funds, not to exceed a maximum sum of $816,593.00 in federal funds. The estimated cost and participation by the various parties is as follows:

	Total Estimated Cost	Estimated Federal Funds	Estimated Sponsor Funds	Estimated State Funds
Construction (Including Professional Fees For Construction Engineering and Inspection)	$1,020,741.25	$816,593.00	$204,148.25	$0
Total	$1,020,741.25	$816,593.00	$204,148.25	$0

Plans for constructing improvements under this project will be developed by or for the SPONSOR at no expense to the STATE or FHWA. Construction of improvements under this agreement will be by contract in keeping with applicable competitive bid laws. Necessary engineering and inspection during construction will be performed by or for the SPONSOR and will be paid for with project funds. Any cost incurred by the SPONSOR relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amount previously stated will be borne and paid by the SPONSOR with no liability of the STATE for any such cost.

D. **Project Budget:** The SPONSOR will develop and submit to the STATE for approval a project budget. This budget will be in such form and detail as may be required by the STATE. As a minimum, all major work activities will be described and an estimated cost and source of funds will be indicated for each activity. Space will be provided for approval by the Region Engineer and date of such approval. All cost for which the SPONSOR 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 allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the SPONSOR be reimbursed for expenditures over and beyond the 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 SPONSOR (in accordance with the provisions of 23 CFR Part 635 and 49 CFR Part 24) at no expense to the STATE. This should be shown on the "City and Other Local Public Agency Certification for Physical Construction" form (ROW Certification). Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the SPONSOR. 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 SPONSOR 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. **Relocation of Utilities:** The SPONSOR will relocate any utilities in conflict with the project improvements without cost to the STATE or FHWA.

H. **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 SPONSOR from the sale or lease of property, which is the site of the federally funded project.

I. **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 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. The SPONSOR will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The SPONSOR will not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the SPONSOR will provide all bids to the STATE with a recommendation for award. The SPONSOR will not award the contract until it has received written approval from the STATE.

J. **Invoicing:** The SPONSOR will, when appropriate, submit invoices to the STATE for reimbursement for work performed by or for the SPONSOR 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 Region Engineer for payment. The SPONSOR 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 cost allowable is the cost 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 SPONSOR 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 this twelve-month period will not be eligible for payment.

K. **Maintenance:** Upon completion and acceptance of the work by the STATE, the SPONSOR will assume full responsibility for the project work and will maintain the project work for a reasonable life expectancy.

L. **Contracts under this Agreement:** The SPONSOR 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.

M. **Records and Reports:**

1. Establishment and Maintenance of Accounting Records: The SPONSOR 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 auditor of the Alabama Department of Transportation.

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 SPONSOR will report to the STATE the progress of the project in such manner as the STATE may require. The SPONSOR will also provide the STATE any information requested by the STATE regarding the project.

5. Financial Statements: The SPONSOR 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.

N. **Regulations:** The STATE hereby obligates the SPONSOR to comply with all state and federal laws, rules, regulations, and procedures applicable to this Agreement. The

STATE, upon request, will furnish to the SPONSOR a copy of any and all applicable state and federal laws, rules, regulations, and procedures.

(1) Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a federal, state or local law, must be applied for the maintenance and long term upkeep of the transportation alternatives project authorized by this agreement.

(2) The SPONSOR agrees that in the event it is determined the user fees have not been applied to long term upkeep of the transportation alternatives project, that federal funds expended on this project must be refunded to the FHWA and the SPONSOR will reimburse and pay to the STATE a sum of money equal to the total amount of federal funds expended under this agreement.

O. **Point of Contact:** The applicable or appropriate region office of the Alabama Department of Transportation will be the lead agency for the STATE relative to the work under this agreement and will be the point of contact for the SPONSOR.

PART THREE (3): MISCELLANEOUS PROVISIONS

A. **SPONSOR to Indemnify:** The SPONSOR will be responsible at all times for this project and all of the work performed under this Agreement and especially the SPONSOR will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees, in both their official and individual capacities, 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. By entering into this agreement, the SPONSOR is not an agent of the State, its officers,

employees, agents or assigns. The SPONSOR is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

B. **Federal Immigration Law:** 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.

C. **Audit and Inspection:** The SPONSOR 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 vehicles and equipment utilized or used in performance of the project; records of all transportation services rendered by the SPONSOR in the use of such vehicles 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 SPONSOR will also permit the above noted persons to audit the books, records and accounts of the SPONSOR pertaining to the project at any and all times, and the SPONSOR will give its full cooperation to those persons or their authorized representatives, as applicable.

D. **Audit Requirements:** The SPONSOR 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.

E. **Termination:** In the event the SPONSOR 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 SPONSOR under this Agreement. Any such default or defaults not corrected by the SPONSOR 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 SPONSOR 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 SPONSOR will not constitute a waiver of subsequent default or defaults by the SPONSOR. 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.

F. **Retention of Records:** The SPONSOR 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.

G. **Performance:** The SPONSOR will commence, carry on, and complete the project with all practical dispatch, in a sound, economical, and efficient manner.

H. **Equal Employment Opportunity:** The SPONSOR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The SPONSOR 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 SPONSOR materials for the purpose of monitoring the SPONSOR'S compliance with the provisions of this section.

I. **Title VI – Civil Rights Act of 1964:** The SPONSOR 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 SPONSOR 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 SPONSOR materials which will permit them to monitor the SPONSOR for compliance with the provisions of this section.

J. **Prohibited Interest:** No member, officer, or employee of the SPONSOR 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.

K. **Americans with Disabilities Act:** The SPONSOR will comply with all requirements of The Americans with Disabilities Act of 1990 (ADA).

L. **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.

M. **Permission to Start Work:** The SPONSOR will not proceed with the project work until the STATE gives written authorization for the SPONSOR to proceed.

N. **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.

O. Other Applicable Regulations: The SPONSOR 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).

P. **Subcontracts:** The SPONSOR 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.

Q. **Exhibits M and N** are hereby attached to and made a part of this Agreement.

R. **Agreement Change:** The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.

S. **Drug Free Workplace Act of 1988:** The SPONSOR 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.

T. **7/24th Law:** Nothing shall be construed under the terms of this Agreement by the SPONSOR 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:

City of Huntsville, Alabama

By:_____
City Clerk (Signature)

By:_____
As Mayor (Signature)

_____
Type Name of Clerk

_____
Type Name of Mayor

APPROVED AS TO FORM:

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

RECOMMENDED FOR APPROVAL:

_____
Johnny Harris, North Region Engineer

_____
Robert J. Jilla
Multimodal Transportation Engineer

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

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

_____
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 this _____ day of _____, 20__.

_____
Robert Bentley
Governor, State of Alabama

RESOLUTION NUMBER_____

BE IT RESOLVED, by the City of Huntsville as follows:

1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a Transportation Alternatives project with partial funding by the Federal Highway Administration, which agreement is before this Council;

2. That the agreement be executed in the name of the City, for and on behalf of the City, by its Mayor.

3. That it be attested by the 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 Council.

I, the undersigned qualified and acting City Clerk of the City of Huntsville, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council 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 this_____day of _____, 20__ .

_____
City Clerk

CONSULTANT 3/19/90
REVISED 7/18/90
REVISED 6/16/11

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

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 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.

CONSULTANT 2/15/95
REVISED 5/30/02
REVISED 6/16/11

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.

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

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 consider using appropriate forms of non-binding alternative dispute resolution.

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.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree 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 of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.