

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Apr 23, 2015

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Resolution authorizing the Mayor to enter into an agreement between the State of Alabama and City of Huntsville

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement for Preliminary Engineering, Right-of-Way Acquisition, and Construction between the State of Alabama and City of Huntsville regarding Project IAR-042-000-008; Project Reference Number 100063566; Construct an Access Road from the Existing Greenbrier Road to the Polaris North Property Line to benefit Polaris Industries, Inc. , and the Target Distribution Center in the City of Huntsville

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.

Total estimated cost of this project is \$4,000,000. The Alabama Industrial Access Road and Bridge Corporation has committed to fund \$4,000,000 for construction costs. The City of Huntsville will be responsible for preliminary engineering costs, right of way, utility costs, and all project overruns.

Associated Cost: \_\_\_\_\_ Budgeted Item: \_\_\_\_\_

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: Murphy B. Jordan Date: 4/13/15

ROUTING SLIP  
CONTRACTS AND AGREEMENTS

Originating Department: **Planning**

Council Meeting Date: **4/23/2015**

Department Contact: **Kimberly Gosa**

Phone # **5115**

Contract or Agreement: **Agreement**

Document Name: **Agreement Between the State of Alabama and COH re. Construction of Access Road f...**

City Obligation Amount:

Total Project Budget: **\$4,000,000**

Uncommitted Account Balance:

Account Number: **23-5265-0813-8151 (expenditure acct) ;  
23-5265-309 -8151 (revenue)**

**Procurement Agreements**

<b>Select...</b>	<b>Select...</b>
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**Grant-Funded Agreements**

<b>Select...</b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating	<i>M. Gosa</i>	4/13/15
2) Legal	<i>Mary G. Carter</i>	4/16/15
3) Finance	<i>[Signature]</i>	4/17
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)	<i>[Signature]</i>	4/20/15
b. Clerk-Treasurer (Original & 2 copies)	<i>[Signature]</i>	

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 Preliminary Engineering, Right-of-Way Acquisition and Construction Between the State of Alabama and the City of Huntsville, Alabama; Project IAR-042-000-008; Project Reference number 100063566; Construct an Access Road from the Existing Greenbrier Road to the Polaris North Property Line to benefit Polaris Industries, Inc., and the Target Distribution Center in the City of Huntsville" consisting of ten(10) pages, and the date of April 23, 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 23rd day of April, 2015

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

**APPROVED** this the 23rd day of April, 2015

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

K-15-0827

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

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

**Project IAR-042-000-008  
Project Reference Number 100063566  
Construct an Access Road from the Existing Greenbrier Road to the Polaris North  
Property Line to benefit Polaris Industries, Inc., and the Target Distribution Center  
in the City of Huntsville**

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 Alabama Industrial Access Road and Bridge Corporation, hereinafter referred to as CORPORATION; and

WHEREAS, it is in the public interest for the STATE, and the CITY to participate in a highway improvement program in cooperation with the CORPORATION, and

WHEREAS, the STATE and CITY desire to cooperate in preliminary engineering, right-of-way acquisition, and construction program for constructing an access road from the existing Greenbrier Road to the Polaris north property line to benefit Polaris Industries, Inc., and the Target Distribution Center in the in the City of Huntsville, Alabama, and

WHEREAS, the described access road qualifies for funding under the legislation creating the Alabama Industrial Access Road and Bridge Corporation.

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

\_\_\_\_\_  
President or President  
Pro Tem of the City Council  
of Huntsville, Alabama

April 23, 2015  
Date

- (1) The CITY will furnish all right-of-way for the above noted improvement Project without cost to the STATE.
- (2) The CITY will adjust and/or relocate all utilities on the Project without cost to the STATE.
- (3) The CITY will make the survey, complete the plans, and furnish all preliminary engineering for the Project with CITY forces or by consultant without cost to the STATE. Completed original plans will be furnished to the STATE prior to the CITY letting the contract. The CITY shall follow the guidelines for operation for procedures for processing STATE and industrial access funded COUNTY and CITY Projects dated February 14, 2001. Said guidelines are attached hereto and made a part of this Agreement.
- (4) The CITY will accomplish or cause the work to be accomplished in compliance with all applicable laws of the STATE and the CITY and applicable federal laws, regulations, and requirements.
- (5) The CITY will furnish all construction engineering for the Project from CITY forces or by consultant as part of the cost of the Project.
- (6) The CITY or CITY's consultant will furnish the necessary inspection and testing of materials when needed as part of the cost of the Project.
- (7) The STATE will have general supervision of the Project by making periodic inspections and final acceptance of Project work and the cost therefore will be deemed a part of the Project cost.
- (8) Invoices of the CITY for actual cost of work performed will be forwarded to the STATE as work progresses and the CITY will be paid the proportionate share of such cost in

proportion to the STATE's prorated portion of total Project cost, to be paid with CORPORATION funds. Any work authorized before the execution of this agreement will not be eligible for reimbursement.

- (9) The CITY will immediately cause all work on the Project to cease upon notification by the STATE that the Project work is not being accomplished in accordance with the plans and/or this Agreement. Financial participation by the STATE will be with CORPORATION funds limited to \$4,000,000. The estimated cost and participation by the various parties are as follows:

	Total Estimated <u>Cost</u>	Total Estimated CORPORATION <u>Funds</u>	Total Estimated CITY <u>Funds</u>
Construction (including engineering and inspection)	<u>\$4,000,000</u>	<u>\$4,000,000</u>	All Cost in <u>Excess of</u>
TOTAL	\$4,000,000	\$4,000,000	\$4,000,000

It is understood the above is an estimate only and all Project cost in excess of \$4,000,000 will be borne and paid by the CITY. In the event the Project work is not completed for any reason, the CITY will refund by payment to the STATE an amount of money equal to the full amount of funds previously paid by the STATE to the CITY.

- (10) The North Region of the Alabama Department of Transportation will be the lead agency for the STATE relative to the work under this Agreement and will be point of contact for the CITY.
- (11) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE.

- (12) 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.
- (13) It is clearly understood by both parties that the STATE does not commit any STATE funds beyond those CORPORATION funds mentioned herein.
- (14) A final audit will be made of all Project records after the 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 final audit.
- (15) 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.
- (16) 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.
- (17) 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.

- (18) The Agreement may be terminated by the STATE at any time the State Director of Transportation determines that the owner of the proposed facilities will not locate or expand facilities as previously represented. Such termination will occur upon notice of termination from the Director of Transportation to the other party or parties to this Agreement by registered or certified mail, or by other actual notice by the Director to such party or parties. Upon termination, settlement will be made and paid only for such expenditures made prior to termination and which are found to be equitable and just by the Director of Transportation.
- (19) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (20) The approved allocation of funds for this Project will lapse if a contract has not been awarded for construction of the Project within twelve (12) months (March 10, 2015) of the date of the funding approval by the Board and the approved allocation will be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.
- (21) 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 (7/24<sup>th</sup> Law).
- (22) Exhibit N is 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:

CITY OF HUNTSVILLE, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

BY: \_\_\_\_\_  
Mayor (Signature)

Charles Hagood  
Type name of Clerk

Tommy Battle  
Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED  
AND APPROVED AS TO FORM AND CONTENT:

BY: \_\_\_\_\_  
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
North Region Engineer, Johnny L. Harris, P.E./P.L.S.

\_\_\_\_\_  
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

**STATE OF ALABAMA  
DEPARTMENT OF TRANSPORTATION  
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL  
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Division and notification from the Division that advertisement for bids can be made, or, in the case of negotiated projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Division will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Division to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Division may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a negotiated project.

For negotiated projects, the Division will prepare a cost estimate following normal estimating procedures; then reduce each computer generated unit cost by 10%. This will be the amount used by the County/City on their estimate for reimbursement. In the case where a County/City is using an in-place annual bid, the County will furnish the Division a copy of their bid and this bid price will be used for reimbursement.

Where the County/City is letting a contract locally, the County/City will furnish to the Division the three lowest bids with their recommendation for award. The Division will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Division when the project is complete and the Division will perform a final ride-through to determine whether the project was completed in substantial compliance with the original final plans. Final acceptance will be made by the Division with a copy of the letter furnished to the Bureau of County Transportation.

All required test reports, weight tickets, materials receipts, and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:

John A. Cawson  
BUREAU CHIEF/DIVISION ENGINEER

APPROVAL:

Ray D. Bass  
CHIEF ENGINEER

APPROVAL:

[Signature]  
TRANSPORTATION DIRECTOR

2/14/01  
DATE

RESOLUTION NUMBER \_\_\_\_\_

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

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

Preliminary engineering, right-of-way acquisition, and construction agreement Project IAR-042-000-008, Project Reference Number 100063566 for constructing an access road from Greenbrier Road to the Polaris north property line to benefit Polaris Industries, Inc., and the Target Distribution Center in the City of Huntsville; 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 Huntsville, 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

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.