

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: May 12, 2016

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Agreement for Construction Between the State of Alabama and City of Huntsville

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an agreement for construction between the State of Alabama and City of Huntsville regarding Project STPAA-AL-61(900); Improve Pedestrian Facilities at Five Points, located near Holmes Avenue, Pratt Avenue, and Andrew Jackson Avenue in Huntsville, Alabama; Project Reference Number: 100045139

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

Item to be considered for: Action

Unanimous Consent Required: No

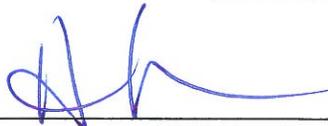
Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

This agreement will cover funding of construction (including engineering and inspection). Project costs will be financed with 80 percent Federal funds and 20 percent State funds. Any costs not eligible for Federal participation will be financed 100 percent by the City.

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head:  _____

Date: 28 April 16

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Planning**

Council Meeting Date: **5/12/2016**

Department Contact: **Kimberly Gosa**

Phone # **427-5115**

Contract or Agreement: **Agreement**

Document Name: **Agreement for Construction Between the State of AL and COH**

City Obligation Amount: **0**

Total Project Budget: **\$592,513.21**

Uncommitted Account Balance:

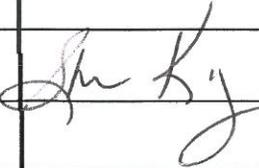
Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
------------------	------------------

Grant-Funded Agreements

<u>Select...</u>	Grant Name:
------------------	--------------------

Department	Signature	Date
1) Originating		20 April 16
2) Legal	Mary C. Cates	5/4/16
3) Finance	M. Sargent	5-5-16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		5/5/16
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16- _____

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 Construction Between the State of Alabama and the City of Huntsville, Alabama; Project STPAA-AL61(900); Improve Pedestrian Facilities at Five Points, located near Holmes Avenue, Pratt Avenue, and Andrew Jackson Avenue in Huntsville, Alabama Madison County; Project Number 100045139" consisting of (six)6 pages plus two(2) additional pages consisting of Exhibit M and Exhibit N, and the date of May 12, 2016, 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 12th day of May, 2016

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

APPROVED this the 12th day of May, 2016

Mayor of the City of Huntsville,
Alabama

**AGREEMENT
FOR
CONSTRUCTION**

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

**Project STPAA-AL61(900)
Improve pedestrian facilities at Five Points, located near Holmes Avenue, Pratt
Avenue, and Andrew Jackson Avenue in Huntsville, Alabama
Madison County
Project Reference Number: 100045139**

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 the 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 the CITY desire to cooperate in a project construction to include engineering and inspection for pedestrian improvements at Five Points, located near Holmes Avenue, Pratt Avenue, and Andrew Jackson Avenue in the City of Huntsville, Alabama.

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 funding of construction to include engineering and inspection in accordance with plans approved by the STATE. 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 the point of contact for the CITY.
- 2) 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 STATE funds. The estimated cost and participation by the various parties is as follows:

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

	<u>Total Estimated Cost</u>	<u>Total Estimated Federal Funds</u>	<u>Total Estimated State Funds</u>
Construction Including Engineering and Inspection	<u>\$592,513.21</u>	<u>\$474,010.56</u>	<u>\$118,502.65</u>
Total	<u>\$592,513.21</u>	<u>\$474,010.56</u>	<u>\$118,502.65</u>

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the STATE will be responsible for its proportional share. It is expressly understood by both parties of this Agreement that all Federal funds will be Surface Transportation Program Any Area (STPAA) program funds, attributable to the Huntsville Area.

- 3) Any cost for work not eligible for Federal participation will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- 4) 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 award of the contract, the STATE will invoice for its pro rata share of the estimated construction cost as reflected by the bid of the successful bidder plus the engineering and inspection cost, and the STATE will promptly pay this estimated cost before the award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the STATE 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 STATE or its designated representative.
- 5) The CITY will coordinate required adjustment 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 part of the project cost and will be paid as provided herein, with the STATE paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement under state law.
- 6) Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the North Region Engineer for payment. 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. All invoices will be approved by the STATE.
- 7) Invoices for any work performed by the STATE 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.

- 8) The project will commence upon execution of this agreement and upon written authorization to proceed from the STATE directed to the CITY.
- 9) It is expressly understood that this is a cost reimbursement program and no federal funds will be provided to the STATE prior to accomplishment of work for which reimbursement is requested.
- 10) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the improvements which are not part of the Alabama Highway Maintenance System.
- 11) The CITY 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 the rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- 12) 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 and this Agreement.
- 13) The performance of the work covered by this Agreement will be in accordance with the current requirements of the STATE and FHWA.
- 14) The STATE will assist the CITY, if necessary, in any public involvement actions that may be required.
- 15) Each party will provide without cost to the other, information available from its records that will facility the performance of the work.
- 16) Subject to the limitations on damages applicable to municipal corporations under Ala. Code §11-47-190 (1975), the City shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the City, or its officers, employees, contracts, agents or assigns (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 or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees , caused by the negligent, careless or unskillful acts of the City its

agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the City, its agents, servants, representatives or employees, or anyone for whose acts the City may be liable.

- 17) 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.
- 18) Retention of Records: The CITY 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.
- 19) Any dispute concerning a question of fact in connection with the work not disposed of by this Agreement between the CITY and the STATE will be referred to the director of the State of Alabama Department of Transportation, whose decision will be final.
- 20) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- 21) Either party has the right to terminate this Agreement at any time by giving thirty (30) days written notice of termination. Said notice will be mailed by certified or registered mail.
- 22) 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.
- 23) Exhibits M and N are hereby attached to and made a part of this Agreement.
- 24) 7/24th Law: Nothing shall be construed under the terms of this Agreement by the CITY or the STATE that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

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 hereinafter stated as the date of the approval of the Governor of Alabama.

SEAL

ATTEST: THE CITY OF HUNTSVILLE, ALABAMA

BY: _____ BY: _____
City Clerk (Signature) Mayor (Signature)

Kenneth Benion
Type name of City Clerk

Tommy Battle
Type name of Mayor

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

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

RECOMMENDED FOR APPROVAL:

Curtis Vincent, P.E.
North Region

Robert J. Jilla
Multimodal Transportation Engineer

Don T. Arkle, 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, 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:

Project STPAA-AL61(900), Project Reference Number 100045139, a construction project to improve pedestrian facilities at Five Points, located near Holmes Avenue, Pratt Avenue, and Andrew Jackson Avenue in the City of Huntsville, Alabama; which this Agreement is before this Council;

2. That the Agreement be executed in the name of the City, by its Mayor, for and in its behalf and that it 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 City 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 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.

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.