

RESOLUTION NO. 17-_____

WHEREAS the Reimbursable Agreement between City of Huntsville and Huntsville Utilities for Relocation of Utility Facilities on Private or Public Right-of-Way Work for Martin Road between Old Jim Williams and Zierdt Road, Project No. 65-10-RD07, ALDOT Project No. ACAA60160-ATRP(012), as adopted by Resolution No. 17-521 of July 13, 2017, (hereinafter referred to as "Agreement") did not include the required language requiring a representation from the contracting party that the business is not currently engaged in certain boycotting activities in accordance with *Ala. Code (1975)* Section 41-16-5; and

WHEREAS the Alabama Department of Transportation, which provides funding for the Agreement, has not executed that Agreement as approved by the City Council and has informed the City that Exhibit "S" containing the required representation language pursuant to *Ala. Code (1975)* Section 41-16-5 should be included in all ALDOT funded contracts; and

WHEREAS the City of Huntsville desires to add Exhibit "S" containing said language to that proposed Agreement prior to execution by ALDOT, in accordance with the instructions from ALDOT;

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Agreement referenced above as previously approved by the City Council by Resolution No. 17-521 on July 13, 2017 be superseded and replaced by the revised Agreement attached hereto, and that the Mayor be, and is hereby authorized, to enter into a revised reimbursable agreement between the City of Huntsville and Huntsville Utilities for Relocation of Utility Facilities on Private or Public Right-of-Way Work for Martin Road between Old Jim Williams and Zierdt Road, Project No. 65-10-RD07, ALDOT Project No. ACAA60160-ATRP(012), in the County of Madison, Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, and

BE IT FURTHER RESOLVED that such revised Agreement is substantially in words and figures similar to that document attached hereto and identified as "Reimbursable Agreement between the City of Huntsville and Huntsville Utilities for Relocation of Utility Facilities on Private or Public Right-of-Way Work for Martin Road between Old Jim Williams and Zierdt Road, Project No. 65-10-RD07, ALDOT Project No. ACAA60160-ATRP(012)" consisting of a total of eight (8) pages including Exhibits M, N and S and the date of September 14, 2017, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

RESOLUTION NO. 17-_____

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ADOPTED this the 14th day of September, 2017.

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

APPROVED this the 14th day of September, 2017.

Mayor of the City of Huntsville,
Alabama

**UTILITY AGREEMENT
FOR
ALABAMA TRANSPORTATION REHABILITATION AND IMPROVEMENT PROGRAM
(ATRIIP) PROJECT
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 the **STATE**; and the City of Huntsville, hereinafter referred to as the **CITY**; in cooperation with the United States Department of Transportation, the Federal Highway Administration, hereinafter referred to as the **FHWA**.

WITNESSETH

WHEREAS, the **STATE** and the **CITY** desire to cooperate in the relocation of utilities on public right-of-way, hereinafter referred to as the **PROJECT**, as part of the ATRIP project to add lanes on Martin Road from Old Jim Williams Road to Zierdt Road.

Project# ACAA60160-ATRP(012), CPMS# 100060160 CN & 100067322 UT, ATRIP# 45-02-20

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 only the utility relocation aspect for the proposed improvements in accordance with plans approved by the **STATE**.
- (2) The **CITY** will acquire any additional right-of-way, if needed, for the **PROJECT** at no cost to the **STATE** or this **PROJECT**.
- (3) The **CITY** or its representative, will provide the required surveys, complete the plans and perform all other preliminary engineering duties for the **PROJECT** at no cost to the **STATE** or this **PROJECT**. The **CITY** will be responsible for submitting all required environmental documents to the **STATE** and obtaining approval prior to right-of-way acquisition or submittal of final plan assembly to the **STATE**. The plans will be subject to the approval of the **STATE** and the **PROJECT** will be constructed in accordance with the plans approved by the **STATE** and the terms of this agreement.
- (4) If necessary, the **CITY** will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR)(Code Chapter 335-6-12) for the **PROJECT**. The **CITY** and the contractor will be responsible for compliance with the permit and the **STATE** will have no obligation regarding the permit. The **CITY** will furnish the **STATE** (Region) a copy of the permit prior to any work being performed by the contractor.

**President of the City Council of the City
of Huntsville, AL**
Date: September 14, 2017

- (5) The **CITY** will furnish all construction engineering for the **PROJECT** with **CITY** forces or with a consultant selected and approved by the **STATE** as part of the **PROJECT** cost. The cost of construction engineering and inspection shall be included as part of the construction cost for the **PROJECT** and will be paid from funds provided herein.
- (6) The **STATE** will furnish the necessary inspection and testing of materials with **STATE** forces when needed as part of the **PROJECT** cost. The cost of inspection and testing of materials shall be included as part of the construction cost for the **PROJECT** and will be paid from funds provided herein.
- (7) The **CITY** will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction (latest edition) on the **PROJECT** and will ensure that alignment and grades on this **PROJECT** meet the standards of the Alabama Department of Transportation and that the **PROJECT** will be constructed in accordance with the approved plans.
- (8) The **PROJECT** will be administered by the **STATE** and all cost will be financed, when eligible for Federal participation, based on eighty (80) percent Federal **ATRIP** funds and twenty (20) percent **CITY** funds, unless otherwise noted below. Any Federal aid non-participating costs shall be borne by the **CITY** at one hundred (100) percent.
- (9) Funding for this agreement is subject to the availability of Federal **ATRIP** funds at the time of authorization. The **STATE** will not be liable for Federal **ATRIP** funds in any amount. It is understood that the amounts stated below are estimates only. Any shortfall in funding or overrun in utility relocation costs shall be borne by the **CITY**. In the event of an underrun in utility relocation costs, the amount of Federal **ATRIP** funds will be the amount stated below, or eighty (80) percent of eligible costs, whichever is less.
- (10) The estimated cost of utility relocations of this **PROJECT** will be provided from the funds outlined as follows:
- | | |
|--|----------------------|
| Federal ATRIP Funds | \$ 483,312.47 |
| CITY Funds (Including Betterment) | \$ <u>120,828.11</u> |
| Total (Including E & I) | \$ 604,140.59 |
- (11) A final audit will be made of all **PROJECT** records after completion of the **PROJECT** and a copy will be furnished to the Alabama 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.
- (12) The **CITY** will submit reimbursement invoices for the work performed under the terms of this agreement to the **STATE** within six (6) months after the completion and acceptance of the **PROJECT**. Any invoices submitted after this six (6) month period will not be eligible for payment.

- (13) 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 a part of the Alabama Highway Maintenance System. Upon completion and acceptance of the work by the **STATE**, the **CITY** will maintain the **PROJECT** in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.
- (14) 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.
- (15) 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.
- (16) Each party will provide, without cost to the other, information available from its records that will facilitate the performance of the work.
- (17) 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).
- (18) The **CITY** will be obligated for the payment of damages occasioned 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.
- (19) Exhibits M, N, and S are attached and hereby made a part of this agreement.
- (20) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.
- (21) 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.

- (22) The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (23) This agreement may be terminated by either party upon the delivery of a thirty (30) day notice termination.

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

Clerk (Signature)

BY:

Mayor (Signature)
City of Huntsville

Print Name of Clerk

Print Name of Mayor

RECOMMENDED:

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

Innovative Programs Acting Bureau Chief
Terry W. Robinson

Chief Engineer
Don T. Arkle, P.E.

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

Chief Counsel
William F. Patty

Transportation Director
John R. Cooper

**THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON
THE _____ DAY OF _____, 20 _____.**

**GOVERNOR OF ALABAMA
KAY IVEY**

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 participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly

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.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution

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.

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 by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subjected to its provisions.

EXHIBIT S

State Contract ID#: _____
Federal-Aid Project#: ACAA60160-ATRP(012); City of Huntsville
State of Alabama

CERTIFICATE OF COMPLIANCE WITH ACT 2016-312:

I, the undersigned, certify to the State of Alabama as follows:

- a. I am authorized to provide representations set out in this Certificate as the official and binding act of the Contractor, and have knowledge of Alabama's Act 2016-312.
- b. In compliance with Act 2016-312, the Contractor is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

Mayor, City of Huntsville/Certifying Official (Signature)

Print Name of Mayor/Certifying Official

Date of Certification

The above Certification was signed in my presence by the person whose name appears above on this _____ day of _____, 20_____.

Signature of Witness/Clerk

Print Name of Witness/Clerk