ALABAMA DEPARTMENT OF TRANSPORTATION

FIFTH DIVISION
OFFICE OF THE DIVISION ENGINEER
2715 East Skyland Boulevard
P. O. Box 70070, Tuscaloosa, Alabama 35407
Telephone: 205-553-7030
Fax: 205-556-0900

Robert Bentley
Governor

John R. Cooper
Transportation
Director

February 27, 2012

RECEIVED
FEB 2012
City of Tuscaloosa
Mayor's Office

Honorable Walt Maddox
Mayor, City of Tuscaloosa
P. O. Box 2089
Tuscaloosa, Alabama 35403

Attention: Mr. Joe Robinson
City Engineer

Re: Preliminary Engineering Agreement
Project NH-0006( ), Project Reference Number 100057923
Tuscaloosa County

Dear Mayor Maddox:

A copy of the fully executed Preliminary Engineering Agreement between the State of Alabama and the City of Tuscaloosa for the referenced project is included with this transmittal letter.

If you have questions, contact Mr. David A. Kemp at (205) 554-3244

Sincerely,

L. Dee Rowe
Division Engineer

David A. Kemp
Assistant Division Engineer

LDR/DAK/rajc
Enclosure
cc: file

K-12-0414
AGR# 8317

AGREEMENT
FOR
PRELIMINARY ENGINEERING

BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF TUSCALOOSA, ALABAMA

Project NH-0006 ( )
Project Reference Number 100057923
Extending and Adding New Turn Lanes SR-6
(US-82) (McFarland Boulevard)
in the City of Tuscaloosa

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 Tuscaloosa, 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 Tuscaloosa 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 preliminary engineering program for extending and adding new turn lanes SR-6 (US-82) (McFarland Boulevard) in the City of Tuscaloosa.

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

(1) The CITY will perform or have performed all services required to fulfill the purposes of this Agreement. The supervision of the preparation of plans will be

under the Fifth Division of the Alabama Department of Transportation. Plans will be prepared by or for the CITY as a part of the Project cost.

(2) This Agreement will cover only the preliminary engineering phase of the work.

(3) The preliminary engineering phase is hereby defined as that work necessary to advance the development of the Project through construction authorization by the FHWA. This phase will include all environmental studies and documentation required by FHWA.

(4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by the FHWA.

(5) This Project will be administered by the CITY and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties is as follows:

	Total Estimated Cost	Estimated Federal Funds	Estimated CITY Funds
Preliminary Engineering	$450,000	$360,000	$90,000
TOTAL	$450,000	$360,000	$90,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for the 20 percent match. The administrative cost will be a part of the Project cost.

(6) 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.

(7) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay

of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.

(8) All services of the STATE necessary to carry out the intent of this Agreement will be paid as provided for herein.

(9) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.

(10) The CITY will invoice the STATE for the Federal share of preliminary engineering costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the Fifth Division Engineer for payment.

(11) Invoices for any phase of work performed by the CITY under the terms of the Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve month period will not be eligible for payment.

(12) 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. 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.

(13) The STATE will provide without cost to the CITY, information available from its records that will facilitate the performance of the work.

(14) The STATE will assist the CITY, if necessary, in any public involvement actions that may be required.

(15) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction of the proposed improvement.

(16) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.

(17) 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, and a final financial settlement will be made between the parties as reflected by the final audit.

(18) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.

(19) 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).

(20) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused 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 Clerk

Tracy B. Croom

Type name of Clerk

THE CITY OF TUSCALOOSA, ALABAMA

BY:

Mayor (Signature

Walter Maddox

Type name of Mayor

APPROVED AS TO FORM:

By:

Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

Division Engineer, L. Dee Rowe

Multimodal Transportation Planning Engineer
Robert J. Jilla

Chief Engineer, D. W. Vaughn

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 10th day of February 2012.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

7/18/90

Exhibit M

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

07/01/02

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.

RESOLUTION NUMBER _____

BE IT RESOLVED, by the City Council of the City of Tuscaloosa, 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 Agreement Project NH-0006 ( ), Project Reference Number 100057923 for extending and adding new turn lanes SR-6 (US-82) (McFarland Boulevard) in the City of Tuscaloosa; 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 Tuscaloosa, 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

RESOLUTION

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A PRELIMINARY ENGINEERING AGREEMENT PROJECT NH-0006(),
PROJECT REFERENCE NUMBER 100057923, WITH THE STATE OF
ALABAMA FOR IMPROVEMENTS TO MCFARLAND BOULEVARD
(A12-0071)

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL that the Mayor be and he is hereby authorized to execute that certain preliminary engineering agreement Project NH-0006(), Project Reference Number 100057923 with the State of Alabama for improvements to McFarland Boulevard and that the City Clerk is to attest the same.

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, Debby K. Clements, Assistant City Clerk of the City of Tuscaloosa, Alabama, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the City Council of Tuscaloosa at a regular meeting of said Council held on the 24th day of January 2012, as the same appears and remains of record in the record book in the Office of the City Clerk wherein are recorded the minutes of the proceedings of said Council.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the official seal of said City of Tuscaloosa this the 30th day of January 2012.

Debby K. Clements

Debby K. Clements
Assistant City Clerk