



Robert Bentley
Governor

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



John R. Cooper
Transportation
Director

March 14, 2012

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

*Forward:
Jim Hummel
Joe Robinson*

Re: Right-of-Way Acquisition Agreement
Project ST-063-006-010, Project Reference Number 100057924
Tuscaloosa County

Dear Mayor Maddox:

A copy of the fully executed Right-of-Way Acquisition 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 this office at (205) 554-3244.

Sincerely,

L. Dee Rowe
Division Engineer

David A. Kemp
Assistant Division Engineer

LDR/DAK/rajc
Enclosure
cc: file

K-12-0324
AG# 8343

**AGREEMENT
FOR
RIGHT-OF-WAY ACQUISITION**

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

**Project ST-063-006-010
Project Reference Number 100057924
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; and

WHEREAS, the STATE and CITY desire to cooperate in a right-of-way acquisition Agreement 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 do hereby mutually promise, stipulate, and agree as follows:

- (1) Plans will be prepared by or for the CITY in a preliminary engineering Agreement to be decided by the City of Tuscaloosa and the STATE. The STATE will perform or have performed all other phases required to fulfill the purposes of this Agreement in accordance with the laws of Alabama and the plans. Completed original plans shall be furnished to the STATE in accordance with the guidelines for operations for procedures for processing State and Industrial access funded CITY Projects dated February 14, 2001. Said guidelines are attached hereto and made a part of this Agreement.

- (2) This Agreement will cover only the right-of-way acquisition phase of work.
- (3) The right-of-way purchased under terms of this Agreement will be acquired by or for the STATE and in accordance with current regulations of the STATE and FHWA. The STATE will adhere to all STATE and FHWA regulations pertaining to the Acquisition of right-of-way and will coordinate their activities with the Division Acquisition Manager for guidance.
- (4) The project will be administered by the STATE and all cost will be financed with STATE and CITY funds on the basis of 80 percent STATE funds and 20 percent CITY funds. The estimated cost and participation by the various parties is as follows:

| | <u>Total Estimated Cost</u> | <u>Estimated STATE Funds</u> | <u>Estimated CITY Funds</u> |
|--------------------------|-------------------------------------|--------------------------------------|-------------------------------------|
| Right-of-Way Acquisition | <u>\$620,000</u> | <u>\$496,000</u> | <u>\$124,000</u> |
| TOTAL | \$620,000 | \$496,000 | \$124,000 |

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 20 percent of the local match. Overruns will be financed at 80 percent STATE and 20 percent local match. The STATE will invoice the CITY for the matching funds before the STATE will proceed with the right-of-way purchase.

- (5) Any cost for work not eligible for STATE reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (6) The performance of work covered by the Agreement will be in accordance with

the current regulations and requirements of the STATE.

- (7) The CITY will provide without cost to the STATE information available from its records that will facilitate the performance of the work.
- (8) The CITY will assist the STATE, if necessary, in any public involvement actions that may be required.
- (9) The Fifth Division 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 CITY. The Fifth Division office of the Alabama Department of Transportation will also be responsible for approval and acceptance of the completed Project.
- (10) 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 Acts 1994, 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this Agreement.
- (11) The terms of this Agreement may be modified by supplemental Agreement duly executed by the parties hereto.
- (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) This Agreement shall terminate on January 17, 2015, as to any work provided herein for which funding has not been authorized, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination. The CITY agrees that the STATE may unilaterally extend the time of the Agreement.
- (14) 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).
- (15) Exhibit N is attached and hereby made 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 the approval of the Governor of Alabama.

SEAL

ATTEST:

Debby K. Clements
Asst City Clerk (Signature)

Type name of Clerk

CITY OF TUSCALOOSA, ALABAMA

BY: *Walt Maddox*
Mayor (Signature)

WALT MADDOX
Type name of Mayor

APPROVED AS TO FORM:

BY: *Jim Joppolito Jr.*
Chief Counsel, Jim R. Joppolito, Jr.

RECOMMENDED FOR APPROVAL:

L. Dee Rowe
Division Engineer, L. Dee Rowe

Robert J. Jilla
Multimodal Transportation Planning Engineer
Robert J. Jilla

D. W. Vaughn
Chief Engineer, D. W. Vaughn

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

John R. Cooper
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this 9th day of MARCH, 20 12.

Robert Bentley
GOVERNOR OF ALABAMA, ROBERT BENTLEY

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 pro ration 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 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.

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:


BUREAU CHIEF/DIVISION ENGINEER

APPROVAL: 
CHIEF ENGINEER

APPROVAL: 
TRANSPORTATION DIRECTOR

2/14/01
DATE

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:

Right-of-Way Acquisition Agreement for Project ST-063-006-010 (), Project Reference Number 100057924 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 RIGHT OF WAY AND PROPERTY ACQUISITION FUNDING
AGREEMENT PROJECT ST-063-006-010 WITH THE STATE OF
ALABAMA FOR IMPROVEMENTS TO MCFARLAND BOULEVARD
(A11-1242)**

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL that the Mayor be and he is hereby authorized to execute that certain right of way and property acquisition agreement Project ST-063-006-010 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 17th 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
Assistant City Clerk